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A
CORRECT ACCOUNT
OF THE
TRIALS
OF

CHARLES M'MANUS, | PATRICK DONAGAN,
JOHN HAUER, | FRANCIS COX,
ELIZABETH HAUER, | AND OTHERS;

AT HARRISBURGH—JUNE OYER AND TERMINER, 1798.

FOR THE MURDER OF FRANCIS SHITZ,

ON THE NIGHT OF THE 28th DECEMBER, 1797,

AT HEIDELBERG TOWNSHIP, DAUPHIN COUNTY,

IN THE COMMONWEALTH OF PENNSYLVANIA.

CONTAINING,

THE WHOLE EVIDENCE,

AND THE

SUBSTANCE OF ALL THE LAW ARGUMENTS

IN THOSE CELEBRATED TRIALS.

PRINTED AT HARRISBURGH, BY JOHN WYETH.

1798.

[ENTERED ACCORDING TO LAW.]

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A N A C C O U N T

OF THE TRIAL AND PROCEEDINGS AGAINST CHARLES M'MANUS, JOHN HAUER, AND OTHERS, FOR THE MURDER OF FRANCIS SHITZ, &c.

IT seems, pretty generally, to have been the practice to publish the most remarkable trials in capital and other criminal cases, to gratify the public curiosity; and more especially those which have excited, at the time, any considerable attention, arising either from the remarkable circumstances attending them, or the importance of the question tried, establishing some great public or constitutional question. The bulk of the state trials in that country from which we have derived our laws and mode of trial, and the numerous editions of that immense work, furnish convincing evidence of the great attention which has hitherto been given to such publications.

Among the many dreadful murders and assassinations, with the history and trial of which a considerable portion of the work just-spoken of is taken up, there are few, if any, which appear to have been more cruelly and deliberately contrived than the bloody deed which will be detailed in the following sheets.

CHARLES M'MANUS, PETER M'DONOGHY, PATRICK DONAGAN, and FRANCIS COX, were natives of Ireland, from whence they had but lately come into the United States.

JOHN HAUER was born in the county of Northampton, in Pennsylvania, of German parents. Not many years past he intermarried with ELIZABETH, the sister of the deceased FRANCIS SHITZ, and daughter of PETER SHITZ,

a wealthy German, of Heidelberg township in the county of Dauphin. **PETER SHITZ** died in the month of April 1795. By his will he had devised to his daughter **ELIZABETH**, the wife of **JOHN HAUER**, one thousand pounds, but the advancements he had previously made to her, were to be considered as part payment of that legacy. The whole residue of a very large estate he had bequeathed to his two sons **FRANCIS** and **PETER**; with this further direction, that in case of the death of either of his sons under age, or without issue, his share should go to the surviving brother—paying, in such event, an additional £.500 to his said daughter **ELIZABETH**. **FRANCIS SHITZ** had attained his age but shortly before the murder was committed. **PETER SHITZ** is not yet more than 18 years of age. These two boys formed the only obstacles to bar **JOHN HAUER** and **ELIZABETH** his wife, from the enjoyment of the whole estate of old **PETER SHITZ**. This short account of the situation of the family and estate, at once discloses the base motives which induced **JOHN HAUER** to contrive a most diabolical system of wickedness, the murder of the two brothers of his wife; the half of which dreadful purpose he fatally accomplished in the destruction of **FRANCIS SHITZ**.

Immediately after the murder was committed, the public suspicion was fixed upon **JOHN HAUER**—and he was committed to gaol on the following day. **CHARLES M'MANUS** was also apprehended and committed—and his several strange and contradictory confessions and declarations from time to time, induced the arrest and commitment of the other prisoners.—Still, however, the evidence rested solely upon circumstances and conjecture; no direct proof could be procured as to the principal perpetrators of the horrid act. The public mind was extremely agitated and alarmed; and the circumstances of so many being concerned, and the combination so long and so artfully concealed, gave great uneasiness to the people: Nor could any one be insured against injuries to himself, and the violation of his property from a hardened and resolute set of men, strangers in the country, whose former characters were unknown, and who were now supposed to be leagued together for the purposes of murder and pillage, as occasion or opportunity might offer.

In this situation of things, and in expectation of a full and true disclosure of every fact relative to this dreadful transaction, it was thought prudent by

the attorney for the Commonwealth to make use of CHARLES M'MANUS as a witness; and as he had charged JOHN HAUER and PETER M'DONOGHY, as being present, doing the murder, at the house of FRANCIS SHITZ, while he held their horses at the end of the lane—and that the other prisoners were privy and consenting to it, and had assisted in forming the plan:—a bill was prepared in which JOHN HAUER and PETER M'DONOGHY were charged as principals, and PATRICK DONAGAN, FRANCIS COX, HUGH M'DONOUGH and ELIZABETH HAUER as accessaries BEFORE the fact: which bill was found by the grand jury at March Oyer and Term, MARCH 1798.

JOHN HAUER was first put upon his trial, and after it had proceeded a considerable length, he expressed an earnest desire to speak to the judges—to whom he made a full confession of his own guilt, as an accessary BEFORE the fact—but strenuously denied his being present at the house the night of the murder—but that the murder was committed by CHARLES M'MANUS and PETER M'DONOGHY, and that the rest of the prisoners were accessaries BEFORE the fact. The next morning he persisted in this confession in open court—whereupon the court, on motion of the counsel for the commonwealth, discharged the jury from giving any verdict, and remanded the prisoner, in order that a new indictment might be sent up according to the truth of the fact, as it came out upon HAUER's confession. The story of CHARLES M'MANUS being falsified in some very material parts, and it appearing most probable, from the other testimony, that he himself was the person who shot FRANCIS SHITZ, he was not examined as a witness on the trial of JOHN HAUER.

The entry or memorandum of this matter, as made by the president of the court, is taken from his notes, in the following words:

March 16th, 1798.

Eight o'clock P. M. The court adjourned till to-morrow morning at 9 o'clock. The prisoner had sent for the president before the meeting of the court. Last night at 9 o'clock, the president of the court, with judge Gloninger, went to the gaol, when the prisoner made a full confession of his guilt as accessary before the fact, but strenuously denied his being a principal in the murder; which examination he swore to upon oath and subscribed.

March 17th. The court being met and the prisoner at the bar, it was stated to him by the president, in the hearing of every one, that the prisoner had sent for him and Mr. Gloninger : That they received his confession as it respected the murder of Francis Shitz, which he had sworn to and signed. The president then asked him whether he would stand by that confession, and whether it was true : The prisoner answered, he supposed he must, it was all true that stood in the paper.

Mr. C. Smith moved that the jury be discharged from the prisoner, to give the commonwealth an opportunity to file a new bill against the parties now known to the court as principals and accessaries,—on the authority of Fost. §8. 76. 327—8.

Thereupon the court discharged the jury from giving any verdict on this indictment.

The counsel for the prisoner declined interfering, declaring that the prisoner had taken himself out of their hands—that his confession was an act of his own, without consulting them—and they had nothing further to say at present.

The trials of all the other prisoners were postponed, and the witnesses recognized to the next court.

The evidence has not been given, as far as it went, upon this trial, as it will appear entire on the trials at June Oyer & Terminer.

JUNE 11th, 1798.

The following indictment was sent to the grand jury, and returned by them
on the 12th, A TRUE BILL.

At a Court of Oyer and Terminer and General Goal Delivery held at Harrisburgh for the County of Dauphin, before the honorable John Joseph Henry President, and his Associates, Judges of the said Court, on the second Monday of June, in the year of our Lord one thousand seven hundred and ninety-eight.

DAUPHIN COUNTY, ff.

THE Grand Inquest for the body of the county of Dauphin upon their oaths and affirmations respectively do present, That Charles M'Manus late of Heidelberg township in the county aforesaid Labourer, and Peter M'Donough late of the township and county aforesaid Labourer, otherwise called Peter M'Donoghy late of the township and county aforesaid Labourer, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, on the night of the twenty-eight day of December in the year of our Lord one thousand seven hundred and ninety-seven, at Heidelberg township in the said county, and within the jurisdiction of this court, with force and arms in and upon a certain Francis Shitz, in the peace of God and this Commonwealth then and there being, feloniously, wilfully, voluntarily and of their malice aforethought, an assault did make, and that he the said Charles M'Manus, a certain pistol of the value of twenty shillings lawful money of Pennsylvania, then and there charged and loaded with gun-powder and a leaden bullet, which pistol he the said Charles M'Manus in his right hand then and there had and held, to, against and upon the said Francis Shitz, then and there feloniously, wilfully, voluntarily and of his malice aforethought did shoot and discharge, and that the said Charles M'Manus, with the leaden bullet aforesaid, out of the pistol aforesaid then and there by force of the gun-powder, shot, discharged and sent forth as aforesaid, the aforesaid Francis Shitz in and upon the right side of the head of him the said Francis Shitz, and in the right ear of the said Francis Shitz, then and there with the leaden bullet aforesaid, out of the pistol aforesaid by the said Charles M'Manus so as aforesaid shot discharged and sent forth, feloniously, wilfully, voluntarily and

of his malice aforethought, did strike penetrate and wound, giving to the said Francis Shitz with the leaden bullet aforesaid, so as aforesaid shot discharged and sent forth out of the pistol aforesaid by the said Charles M^cManus in and upon the right side of the head of him the said Francis Shitz, in the right ear of him the said Francis Shitz, one mortal wound of the depth of four inches and of the breadth of one inch of which said mortal wound the said Francis Shitz from the said night of the twenty-eight day of December in the year aforesaid until the twenty-ninth day of the said month of December in the said year, at Heidelberg township in the county aforesaid, and within the jurisdiction of this court did languish, and languishing did live on which said twenty-ninth day of December, in the year aforesaid he the said Francis Shitz at the place aforesaid and within the jurisdiction of this court, ~~OF THE~~ **MORTAL WOUND AFORESAID**, did die; and that the said Peter M^cDonough otherwise called Peter M^cDonogh then and there feloniously wilfully voluntarily and of his malice aforethought was present aiding, helping, abetting, comforting assisting and maintaining the said Charles M^cManus the felony and murder aforesaid in manner and form aforesaid to do and commit, and so the jurors aforesaid upon their oaths and affirmations aforesaid do say that the said Charles M^cManus and the said Peter M^cDonough otherwise called Peter M^cDonogh feloniously wilfully voluntarily and of their malice aforethought, him the said Francis Shitz then and there in manner and form aforesaid did kill and murder, against the peace and dignity of the commonwealth of Pennsylvania and against the form of the act of assembly in such case made and provided &c.

The second count stated the killing by several wounds with an axe.

The third count stated the killing to be by the pistol and the axe; they are unnecessary to be given at length.

Then followed the count against the accessaries in the following words:

And the jurors aforesaid upon their oaths and affirmations aforesaid respectively do further present that John Hauer late of the said township of Heidelberg in the county aforesaid Yeoman; Elizabeth Hauer the wife of the said John Hauer, Patrick Donagan late of the same place Labourer,

Hugh M'Donogh late of the same place labourer, and Francis Cox late of the same place labourer, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, before the felony and murder aforesaid in manner and form aforesaid done and committed by the said Charles M'Manus and Peter M'Donogh otherwise called Peter M'Donoghy to wit the 27th day of December in the year aforesaid at the township aforesaid and within the jurisdiction of this court, them the said Charles M'Manus and Peter M'Donogh, otherwise called Peter M'Donoghy to do and perpetrate the felony and murder aforesaid in manner and form aforesaid, of their malice aforethought voluntarily, wilfully and feloniously did incite procure and abet, against the peace and dignity of the commonwealth of Pennsylvania, contrary to the laws, and against the form of the act of assembly in such case made and provided, &c.

JARED INGERSOLL,

Attorney-General.

N. B. The indictment preferred at March preceding was in the same form as the foregoing—except that the words “OF THE MORTAL WOUND AFORESAID” were omitted.

CHARLES M'MANUS and PETER M'DONOGHY being put to the bar, severally pleaded not guilty—and on the following day—viz. June 13th, Charles M'Manus was tried—the jurors sworn were :

1. MICHAEL URICH.
2. SAMUEL STURGEON.
3. DANIEL LONGENECKER.
4. HENRY M'CORMICK.
5. OBED FAHNESTOCK.
6. JOHN STONER.
7. JOHN BOYD.
8. JOHN BLATTENBERGER.
9. WILLIAM SNODGRASS.
10. HENRY STONER.
11. JOHN GRAY.
12. SAMUEL FINNEY.

B.

The clerk of Oyer and Terminer read the indictment to the jury. Mr. C. HALL, for the commonwealth, then opened the evidence much at large, as it will appear in the following pages.

EYE DOEBLER was the first witness sworn on the part of the commonwealth.—She deposed as follows :

I was lying on a bench behind the stove, I had just awakened, and saw a light in the kitchen,—I went out and there was a candle on the dresser—two men were standing by the fire near the dresser; they had their heads bound round with whitish handkerchiefs—they perceived me—and one of them, who had a whitish coat on, looked very angry at me, turned round, and followed me into the room. I took Francis Shitz by the arm, and told him there were some strangers in the house—he was lying on the bench behind the stove asleep. I thought he was just getting up, when a pistol was fired off; the candle went out; some of the blood spirted on my arm. They went out into the kitchen, lighted the candle again, and brought in a wood axe, and cut Francis Shitz four times on the head. I and three boys, Jacob Haverling, John Hoffman and John Doebler ran behind the stove; they attempted to strike us, and advanced upon us with the axe—the candle went out a second time. They went out again and lighted the candle—I ran into the chamber where Peter Shitz was sleeping in bed—I think the three boys went in also—the two men followed us into the chamber, with the lighted candle: they tore down the curtains, and dragged Peter Shitz out of the bed—I do not know how they got out of the chamber, but Peter and they got into the front room—and I ran out of the back door, and got to Shæfer's town, where I told what had happened.

In answer to sundry questions put to her, she said—I did not see the face of one of the men, the other had a long whitish coat on; I cannot certainly say who they were, I was so frightened—the foremost was a little taller than the other. I cannot tell which of them shot the pistol; I thought the one with the whitish coat was the nearest to me when the pistol was shot, and I think, but I cannot be sure, that he held the candle. Their foreheads were tied as low down as their eyebrows. When Francis Shitz was shot, he fell on the floor, near the bench, but he did not speak.—I saw M^r Manus the

Saturday evening following at Shitz's house—I thought he looked angry at me like the man did, on the night the murder was committed.

JACOB HAVERLING, (Sworn.)

I was lying on the floor at Shitz's house, behind the stove, the night of the murder, in the same room where Francis Shitz lay.—When the pistol was fired, I awakened and jumped up; the flash almost flew in my face. The candle was blown out by the shot—I ran behind the stove. One of the men came in with the candle, and brought in an axe, and cut Francis Shitz four times on the head with the axe. He had the axe in one hand and the candle in the other. He then ran after me behind the stove, and wanted to strike me. The candle went out again. He went out and lighted the candle again. I went out from behind the stove, and got out of the window, and ran to Mr. Shafers. I did not go into the room where Peter Shitz lay.—I saw M'Manus the Saturday following, when they brought him to Shitz's house. I can't recollect what sort of a coat he had on the night of the murder—it appeared to be a greyish coat.

(Two axes produced in court.)

These axes belonged to Francis Shitz—it was with one of them he was struck.

LEONARD DOEBLER, (Sworn.)

I found the pistol behind the block in the kitchen, about half an hour after the murder happened. It had a spread Eagle on the but. [A pistol produced and shown to witnesses.] This is the same pistol. The cock was down, and it appeared to be newly fired. I saw a ram-rod lying in the room, in the blood: and I saw another ram-rod in the kitchen—this last ram-rod was a little LONGER THAN THE OTHER.

PETER SHITZ, (Sworn.)

I knew nothing of it till they came into the room where I had been sleeping. I did not hear the pistol go off.—They caught hold of me in the bed, by the breast, and dragged me forward. I threw one of them down on the floor, in the chamber, and then ran out into the room where Francis lay—

they both followed me out with axes; they both had axes. I took a chair and struck one of them with it. I tried to knock down the other one; he staggered towards the bench. The third time I struck, the chair broke.— I went back into the bed-chamber, and fastened the door; I then got out of the window; just as I was getting out, a pannel of the door was broken in by the axes, and the door fell after it. I ran up to the barn, got up the stairs to the overshot of the barn, and got a pitch fork and stood at the head of the stairs. I thought they were coming after me—and I stood there a little while: But when they did not come, I put the fork by, got out of the back door of the barn, went through the orchard, and ran up to Shæfer's town, to one Neff's house. I knocked and Neff let me in. I told him what had happened—they then went down to the house, and I staid behind. By this time I was so weak I could walk no more, and I laid down on the bed at Neff's. I did not know that I was wounded till I got up to Neff's. I was cut very badly in the arm and on the hip, both of them to the bone, about three inches wide. I do not know who did it. I saw no candle when I awakened, and they had hold of me. I heard no voices, except once, one of them said in English, "God damn your soul!" But I did not know the voice.

SAMUEL REX, (Sworn.)

I was alarmed, by my brother in law Michael Valentine, about midnight; he rapped at the door, and told me to get up as quick as I could, and to come down. I looked out of the window, and a boy hallowed to me that the Shitzes were murdered. I went down to the house; I saw Shitz covered with blood; I do not recollect how he lay; he was on the floor. It was on the night of the twenty eighth of December last—about twelve o'clock, or between twelve and one. There was a great quantity of blood, nearly as much as could be taken out of a good clever steer; I was surprized that a human creature could have so much blood: He was lying in it. He appeared to moan very much, particularly when Mrs. Hauer, his sister came. He kept constantly waving his right hand back and forward towards his head. When the pistol was found it was blown into, and the finell of the fresh powder came out; I was convinced it had been recently fired. He had four cuts on his head, and his scull lay bare. We searched for the place where he had been shot, but could discover no marks of it—and we

doubted a long time if he had been shot at all ; but the girl persisted in it that he was shot. Shortly before he died, the doctor discovered that he was shot in his right ear. We then gave up all hopes of his recovery. He died at 10 o'clock the next morning, (December 29th, 1797.)

JACOB MILLER, (Sworn.)

[*The pistol which was found in the house, produced and shown to the witness.*] I saw this pistol in the possession of Charles M'Manus, eight or nine weeks before the murder happened. He and his brother-in-law John Sweitzer had a falling out : M'Manus had struck Sweitzer, and a state's-warrant had been issued against M'Manus. I happened to call in, on a Sunday, after the warrant had issued, at the house of one James Logan. Charles M'Manus and Patrick Donagan were there. I had sometimes done some constable business, and M'Manus suspected I had the warrant—and he ran to his pistols, which were lying on the table, and cocked one of them, and said Miller stand off, or I'll blow your brains out. I asked him what for ; he said, you have a state warrant against me. I told him, no, I have not. He said again, yes, you have. I said, no, I have not : and when he found I had not, he got great with me, and gave me a glass of whiskey. I asked him to show me the pistols, and he showed them to me. I searched if they were charged ; they were both charged very well. One was a newish pistol, and the other was an old one : the old one, it seems to me, was RATHER LONGER THAN THIS.* I am sure this is the pistol which M'Manus had—It had the eagle on the butt, and the same yellow flower on the barrel.

* See Leonard Doeblen's evidence, that one of THE RAM RODS FOUND WAS LONGER THAN THE OTHER.

EMANUEL CARPENTER, Esq. (Affirmed.)

Charles M'Manus called upon me the beginning of November last, and made a complaint that he caught a man in bed with his wife. I told him he must swear or affirm to the fact. He scrupled to swear by the book, and did affirm. I then granted the warrant. Afterwards he walked up and down the room, and after some time, he said, Squire, I have something more to tell you ; he seemed thoughtful : I asked him what it was. He said there were people laying a plot to murder a man near Shæfer's town. I asked him whom they were going to murder. He replied, it was one

SHITZ. I said, SHITZ is an old man, who would kill him? I still thought the old man was alive. He then told me it was not the old man, he was dead; it was the young one, his son. I asked him who was going to kill him. His answer was "TWO BOYS"—and mentioned he would willingly take a warrant for them people. I asked him where SHITZ lived. His reply was, that he lived about two miles or so beyond Shæfer's town. I told him the man lived in the other county, [Mr. Carpenter is a justice in Lancaster county, but he was certainly overcautions in this instance] and I can't do any thing in it. I told him he ought to inform Shitz of it, and let Shitz look for his protection in law—and (I said) you will be his witness, if you mean to do an honest act, and he is in danger;—he said, I BELIEVE I will. I had known Charles M'Manus a year or better before this.

PHILIP CAFFERY, (Sworn.)

I was sitting at my work, one evening at Manheim, about two weeks before last Christmas, in one Philip Bretz's shop, working at my trade of shoemaking. FRANCIS COX came to me, and told me he had something to say to me. I told him I had not time till I had finished my pair of shoes: That when I had done, I would go up to his house in the evening, and he might tell me what it was then. When I quit my work, I did go up to his house, but he was settling some law business about some partnership affair, which he and Michael Hogan had together, at Squire Ensminger's. I went to Ensminger's—I asked Cox what he wanted with me. He said he could not tell me till that affair was settled. I waited at Ensminger's until the affair was over. Francis Cox and my employer then walked on a rod before; Charles M'Manus and I walked together behind—we all went to Cox's house together. On the road Charles M'Manus asked me to go to some town to sleep at a tavern on such a night; I don't recollect the name of the town—I think it was LEBANON, I am not sure: Either the first or second night after Christmas, I think was what he said; and if I would sleep there he would give me as much money as would put me from hard work or slavery. I asked him what it was he wanted with me. He told me he would not tell me till I would swear an oath upon a book. I told him I would have no call to it, it BE TO BE something that was not right. He said it would not hurt me at all. I went home with my employer. Next day, or two days afterwards, Cox came to the shop, where I was sitting as

my work, and asked me if I would do what they were talking of before. I told him I would not. I asked him if he knew what it was—he said not. M^cManus said he was to go out of the house in the night, but Cox and me were to stay in the house.

JACOB GEIGER, (Sworn.)

On the Thursday evening before new-year, about half an hour before sun set, Francis Cox and Charles M^cManus came to my house; they had one creature along. Charles M^cManus asked me if I had any oats, I should give it to his mare. Cox said, no, I should give her hay first. They asked for half a pint of whiskey; they asked to stay all night, and wanted supper. They got their supper. Then three Jersey men, who were travelling to Jersey, came, and wanted to stay all night. About fifteen minutes before 8 o'clock, Cox and M^cManus asked to go to bed. I put them up stairs in a room where two beds stood. I told them they two must sleep together. Cox made answer that they HAD SLEPT MANY A NIGHT TOGETHER. They ordered me to bring them half a pint of whiskey, and some water. When I took it up, they wanted me to take a glass of it; I told them I would not. Cox drank a glass, and asked Charles M^cManus if he wanted to drink a glass. He said, No, in the MORNING. When I came down, I observed one of the Jersey men had boots on; so I went back into the room where Cox and M^cManus lay, and fetched a pair of slippers down. M^cManus asked me if them people wanted to go soon to bed. I answered, yes. The Jersey men soon after went to bed. I put two of them in the same room with Cox and M^cManus: the other Jersey man I put into a bed by himself. I then went to blacken the boots: while I was cleaning the boots, I heard my wife talking to M^cManus, outside of the door of the room, in the kitchen. She told him, I am sure you need not come down, you have got a pot under your bed. He made answer, I want to go out.—He staid a good while; he had no coat on when he went out. My wife got uneasy at his staying so long:—after a while I went out about the house and barn, and looked every where, but could not find him. I then went and looked in the bed, and he was not there. I asked Cox where his comrade was: He answered that he complained of the BELLY-ACHE. We then hunted for him a second time, but could not find him. I went up to Francis Cox again, and told him to get up and help me to hunt his comrade. He an-

fwered, may be he went after the girls ; and he would not get up. My wife then wanted me to get some of the neighbours to help to hunt for him. I went to one Abraham Meyers, about 50 rods down the road, but could not get him. I was afraid M'Manus had hanged himself. I then went to Martin Imhoffs ; I could not get him—I went home again. My wife told me to raise up the travellers. I told her I was afraid, that I did not like to go to travellers' rooms by myself. At last I got one Brown, who lived in the house, to go up with me, and I wakened the travellers. I told one of the two who lay in the room where Cox was, to lay still, that I was afraid of Cox, he had refused to get up to help to look for Charley. When Cox heard that, he got up out of his bed. I went with the candle to Cox's bed, and FOUND COX'S SHOES WERE GONE. I had M'Manus's boots locked up. I saw that the whiskey was drank out. M'Manus's hat and coat lay on the table. COX TOOK THE SLIPPERS which I had given to Charley, AND PUT THEM ON HIS FEET. We hunted Charley up and down—round the barn, and in the barn, but could not find him. Cox looked a little, but not much. We then went back to the house. We kept a candle burning all night. The Jersey people asked Cox, where that man (M'Manus) had his home. He answered, that he had his home no where. Francis Cox and Brown went to bed again. We had hunted for M'Manus about half an hour, or an hour. My wife staid up a great while ; I and the Jersey people staid up all night. One of the Jersey people looked at his watch ; it was then about 10 o'clock ; and we thought M'Manus was dead by that time, as he did not come back. We waited awhile, and looked at the watch, and it was ONE o'clock—and again at 2 o'clock. M'Manus had not yet come back. Awhile after this, Francis Cox came down and said to me, M'MANUS is down there that we had been hunting for ; that he threw some stones upon the roof and wanted me to let him in. We did not hear them. He said he had come down to let him in. Cox then went to the door, opened it, and said, Damn your soul, Charley, where have you been, to make us hunt you all night. M'Manus said nothing. We heard him going up stairs with shoes on, but he did not come into the room where we were. One of the Jersey men looked at his watch at this time, and it was three o'clock exactly. Next morning the Jersey people asked him where he was ; he made answer, that he was ALONG WITH A WOMAN : that he had made a bargain with a woman out of Lebanon, and she would not come to my house, for

that he met her there, and they then went to old Imhoff's barn together. The Jersey men plagued him a good deal about it. He then called for a pint of whiskey, and wanted breakfast. I told him I could not give them breakfast, as my wife had gone to bed sick; but I would give them some cold victuals. He asked to see my wife; I went in with him to the room; he offered her £.5 if she would stand on her feet. He went in a second time, and told her not to take it so hard; that for the price of his little mare in the stable he would not that it had happened so: that next Sunday he would give her a present that was worth £.10—that he had ENOUGH, and could do it without hurting himself.

It was a VERY COLD night. It was the same night the murder was committed. It is about five or six miles from my house to where Shitz lived.

Cox rode the mare away the next morning; shortly after M^cManus followed him on foot.

MARY GEIGER, the wife of Jacob Geiger, was next affirmed as a witness.

She related the circumstances in the same manner as her husband, it is therefore unnecessary to repeat them, unless where she was somewhat more minute and particular. She said:—

That after all the strangers had gone to bed, she had locked the front door, and had gone into her own room to make her bed, and bolted the door with a bolt inside, that it had no other fastening. That soon after she heard a rattling at the outer door; she unbolted her own door, and saw M^cManus standing in the kitchen, at the outer door, with a handkerchief tied round his head, which had a whitish appearance—(to use her own words.) I am sure, says I, you frightened me. He gave a laugh. Sure, says I, you need not have come down, you have got a pot under your bed. He said he wanted to go out; I then unlocked the door. I looked after him, and saw a little red shining thro' the handkerchief which was tied round his head. He had come to our house before, and pretended that he wanted to buy cattle. We hunted him about an hour, Cox helped to hunt, but did not go as the rest did, and did not SEEM MUCH CONCERNED ABOUT IT.

We kept a lamp burning all night. One can see from the outside, when there is a light in the house; the people were all sitting in the place where the light was, and any one might see them thro' the window, from the road.

When M'Manus went out he had nothing on but his shirt, a jacket without sleeves, and his trousers. He had NO SHOES ON, and I believe no stockings. It was very cold that night. He had no bundle in his hand carrying.

When Cox came down to let M'Manus in, he came down very softly without either SHOES OR SLIPPERS ON; I did not hear him till he came to the door—We could then see that he had no shoes or slippers on. He then let M'Manus in, and they went up stairs together, and we heard M'Manus GOING UP STAIRS WITH SHOES ON, but we did not see him, as they did not come into the place where we were.

M'Manus told me the next morning that he could give me a present of £.10 and not hurt himself, for HE HAD ENOUGH. He said he had been along with a girl.

CHARLES M'MANUS's confessions and examinations, being four in number, were then read; but they were lengthy and contradictory: in one of them he had given as a reason for his leaving Geiger's house, that he had taken ill with a complaint in his bowels, but did not adhere to the story of the girl. In his other confessions he declared that John Hauer and Peter M'Donough were the persons in the house and actually present at the killing; that he himself held their horses at the end of Hauer's lane, which was admitted to be three quarters of a mile, at least, from the scene of action—and strongly denied his having any other hand in it. That Patrick Donagan was the person who procured him to have any concern in it; and that they were to have £.1100 for the job. That he once threatened to tell, and actually did inform Squire Carpenter, and a man at Manheim, one Evans, that the murder was to be committed. That he had met Hauer and M'Donough at the Black Horse tavern, the Sunday before the murder was committed, and the Thursday night following (28th) was agreed upon for its execution. That M'Donough wanted Cox to go with him, but Cox threatened to tell, and he was then to get £2 or 300 for concealing it.

The above is the substance of what M^cManus declared, some of the examinations were sworn to—But it is to be much questioned if they consist with the truth of the fact in the total, as will be seen upon the following trials.

One of the examinations was not signed, but was reduced to writing : and Mr. Montgomery, and Mr. Patterfon, who had been assigned as counsel for the prisoner, by the court, excepted to its being read, and also to the examination of Judge GLONINGER, before whom it was taken, to prove the fact, as it was not signed by the prisoner, and that no parole evidence should be allowed—As to his declarations before a magistrate or judge, that by the statutes of Philip and Mary, they are expressly required to be put in writing ; —and the Court heretofore have refused such examinations when they have not been signed by the prisoner. They cited Fireman & Henwell. Hardw. ca. 306, where an examination upon oath, in writing, signed by the Mayor before whom it was taken, but not by the witness, was offered in evidence. That Lord Hardwicke would not let it be read, *for no examination shall be read, unless signed by the party.*

The counsel for the commonwealth said they were very indifferent about the admission of the evidence : it was merely to show how much he had varied in his different relations, at the different times, and how little reliance was to be placed upon his confession as to the actual share he himself had in the diabolical act. That there was sufficient evidence without it. That it could not, however, be refused upon the reasons given. The case in Hardwicke was the case of a deposition of a witness in a cause, which must always be signed by the party—that that was not a case within the contemplation of the statutes of Ph. & Ma. That those statutes not only did not require the examinations to be *signed*, but they did not even require them to be *put in writing* at the actual time of taking them. The words are “That justices
“ of peace when any prisoner is brought before them on a charge of felony,
“ *shall* take the examination of the said prisoner, and the information of
“ them that bring him, of the fact and circumstances thereof ; and the same,
“ or as much thereof as may be necessary to prove the felony, *shall* be put
“ in writing *within two days* after the next examination, and certified to the
“ next general Goal Delivery.” Stat. 1 & 2. Phil. & Ma. c. 13. l. 4. and
2 & 3 Ph. & Ma. c. 10.

HENRY, *President*. I do not recollect how the Court may have decided heretofore: The case in Hardwicke may at one time have induced an opinion that the examination should be signed as well as reduced to writing; but the Court have considered the subject, and they have no doubt at all about it. The case in Hardwicke does not apply to the question; it is not the case of the examination of a felon, but the deposition of a witness; the language of the Statutes is very plain, and they do not require the examination to be *signed* by the party. Let it be read. See Leach's cases in the Cr. Law, 2d edition, 184, 254, 286-7. 2 Hawk. c. 15. s. 59. and c. 16. s. 11.

The prisoner called but one witness, who proved nothing material for him.

PETER LIVERGOOD, (called by the prisoner) Sworn.

Charles M'Manus worked with me a while towards last fall. Peter M'Donough borrowed a pistol from me, he said he wanted it to strike a fire to blow rocks with. Charley M'Manus and he were working together, Peter M'Donough returned the pistol to me again. I lent but one pistol:— *it was an old one, a little longer than this here.* [Pointing to the pistol found in the house.] Charles M'Manus never borrowed any pistol from me.

COUNSEL for the PRISONER.

We have no desire to address the jury. We think, however, that the whole of the confessions should be taken together, and not apart only; and by them it will appear that M'Manus was not present at the murder, but nearly a mile distant; that of course he could not be convicted on this indictment, but ought to be considered merely in the light of an ACCESSARY BEFORE THE FACT.

COUNSEL for the COMMONWEALTH.

We wish the gentlemen would address the jury, if they are able to say any thing in the prisoner's behalf; we shall then be able to answer them; that this mode of proceeding could answer no purpose. That as to the circumstance of taking his confessions all together, that was impossible—they were so variant and contradictory, they could not be reconciled. We, on the other hand, have given the strongest evidence to induce a belief that his story is not true; but that he was one of the men who were actually IN the house the

night of the murder. But putting it upon the gentlemen's own ground, it would make no difference as to the result, but the prisoner must be convicted even upon his own confessions ; for it is not necessary he should be the very person who fired the pistol, or struck the stroke, nor even that he should be an eye or an ear-witness ; if in any other way he was aiding the general design, though at a distance off, it is a sufficient presence, to make him a principal. In Fost. 349. f. 4. it is said, " When the law requireth the presence
 " of the accomplice at the perpetration of the fact, in order to render him a
 " principal, it doth not require a strict actual immediate presence, such a
 " presence as would make him an eye or an ear-witness of what passeth.

" Several persons set out together, or in small parties, upon one common
 " design, be it murder or other felony, or for any other purpose unlawful in
 " itself, and each taketh the part assigned him ; some to commit the fact,
 " others to watch *at proper distances and stations* to prevent a surprize,
 " or to *favor*, if need be, the *escape* of those who are more immediately en-
 " gaged. They are all, provided the fact be committed, in the eye of the
 " law, present at it. For it was made a common cause with them, each
 " man operated in his station at one and the same instant towards the same
 " common end ; and the part each man took tended to give countenance,
 " encouragement and protection to the whole gang, and to ensure the success
 " of their common enterprize." And again, in pa. 351. f. 6. it is further
 " said, that " in combinations of this kind the mortal stroke, tho' given by one
 " of the party, is considered in the eye of the law, and of sound reason too,
 " as given by every individual present and abetting. The person actually
 " giving the stroke is no more than the hand or instrument by which the
 " others strike.

" And therefore where the indictment chargeth, that A. gave the mortal
 " stroke, and that B. and C. were present aiding and abetting ; if it cometh
 " out in evidence that B. was the person who gave the stroke, and that A.
 " and C. were present aiding and abetting, they may be all found guilty of
 " murder or manslaughter at common law, as circumstances may vary the
 " case. The identity of the person supposed to have given the stroke is but a
 " circumstance, and, in this case, a very immaterial one ; the stroke of *one*
 " is in consideration of law the stroke of all." So that in which ever point

of view the evidence may be considered by the jury, they must convict the prisoner.

The Court expressed their opinion very decisively that it could not possibly make any difference ; and that if the fact was even believed by the jury, that M^cManus was not in the house, but at the end of the lane, with the horses, ready to assist the perpetrators of the deed in their escape or flight, he was equally guilty with them, and ought to be convicted on this indictment ; the fact of the killing being stated in the indictment, to be done by M^cManus, being a mere circumstance, and no ways material.

The Counsel for the prisoner therefore declined saying more ; and the matter appearing so plain, the Counsel for the Commonwealth did not address the jury.

THE PRESIDENT in his charge went into a particular detail of the evidence : He told the jury that if one circumstance had turned up favorable to the prisoner, he should have thought himself bound to have given it its full force ; but that no favorable circumstance had occurred which could induce them to hesitate a moment respecting the guilt of the prisoner. He also told the jury, that by a late act of assembly, they must ascertain in their verdict, if they found the prisoner guilty, whether he was guilty of murder in the first or second degree. That from the circumstances in this case it was unquestionably murder in the first degree,

The jury retired from the bar, and in about an hour, returned with a verdict that Charles M^cManus was GUILTY OF MURDER IN THE FIRST DEGREE, which was so recorded.

PRESIDENT OF THE COURT.

Charles M^cManus ; On Tuesday next the Court will pass sentence on you. If you have any thing to move in arrest of judgment, we will then hear you.

Prisoner remanded.

The rest of the prisoners were then ordered to the bar to be arraigned as accessaries before the fact.

Clerk of Oyer and Terminer read the indictment.

Clerk. How say you, PATRICK DONAGAN, are you guilty of the felony whereof you stand indicted, or not guilty?—

Prisoner. Not guilty.

Clerk. How will you be tried?—

Prisoner. By God and my Country.

Clerk. God send you a good Deliverance.

The same form as to the other prisoners, except as to JOHN HAUER.

Clerk. How say you, JOHN HAUER, are you guilty of the felony whereof you stand indicted, or not guilty?—

Prisoner stood mute.—

Mr. DUNCAN. The counsel for the prisoner feel considerable difficulty as to the mode of bringing forward an application to the court on his behalf; they therefore claim the indulgence of the court. They are satisfied the court will be so far of counsel for the prisoner as not to suffer him hastily to be surprized into a plea, which may operate to his injury. JOHN HAUER was indicted at the last court as a principal. He was then arraigned, pleaded—a jury sworn, testimony given, and afterwards that jury discharged without giving a verdict. We contend that after such discharge, he can never again be put upon his trial for the same offence. This new indictment is, in fact, for the same offence. The offence of a principal and of an accessory *before* the fact, are substantially the same; and if one is acquitted as principal, he can not be indicted again as accessory *before* the fact. We shall, *first*, show the court, that no law is better settled than this; and, *secondly*, we will contend that a jury once discharged in a capital case, amounts to an acquittal of the prisoner, and he cannot be put a second time upon his trial for the same offence. Our motion, therefore, will be, upon this ground, that JOHN HAUER be not put to *plead* to this indictment, but that he be *discharged therefrom*.

In *1. Hale 626.* it is expressly laid down, that if A. be indicted as principal and acquitted, he shall not be indicted as accessory BEFORE, and if he be, he may plead his former acquittal in bar, for it is in substance the same offence; *Stamf. P. C. lib. 2. cap. 36. fol. 105. a. 2 Ed. 3. Coron. 150 & 282.* But the antient law was otherwise. *8 Edw. 2. Coron. 424.* In *Ke. lynge 25-6.* This doctrine is, upon consideration of the books, agreed to be the law. It is true, this case goes farther, and upon a doubt being suggested whether, if the prisoner should be acquitted as principal, he could be afterwards indicted as accessory BEFORE the fact; to avoid this doubt, the court discharged the jury of him, and ordered another indictment to be against him as accessory. We are, however prepared to show that this latter point is not the law, but that it has been long since exploded. This case must certainly be determined upon principle and precedent, and not on the chamber opinions and speculative reasoning of any judge, however reputable and learned. The gentlemen mean to rely greatly upon *Foster*—yet even Judge Foster lays it down, that one acquitted as principal cannot be indicted as accessory BEFORE; he speaks of it as a settled point; and although he finds fault with the principle, and throws out his doubts for the opinion of the learned, yet this cannot control what is admitted to be the law of the land. So in *Hawkins chap. 35. f. 11.* this is said to be holden to be the law in many books of good authority: Sir *Wm. Blackstone* states it in the same way, as a settled point. What authority have we in opposition to these sentiments of *Hale & Foster*, of *Hawkins & Blackstone*? or how can a doubt remain as to the law upon this point? It stands uncontroled by any judicial decision. Then, if the prisoner be indicted for an offence of which an acquittal on the former indictment might have been pleaded in bar; we contend that the discharge of the jury upon that trial has the same operation. This is the same offence for which *JOHN HAUER* was indicted at the last court, and he cannot be twice put in JEOPARDY for it. We will show that the court have not the power to discharge the jury, after the evidence, for any thing that appears on the record, was all gone through on the part of the commonwealth. If the contrary doctrine could be supported, then the life of a prisoner might be put in JEOPARDY as often as the prosecutor might think fit, either for the purposes of oppression, or because he might not have evidence sufficient to convict. Even in a civil action a jury cannot be discharged without consent, whatever may be the justice of the case. Shall

We be less tenacious of the principle where the life of a man is at stake? We admit that cases of *necessity* may exist, in which the court must unavoidably discharge the jury.—The case of a juror dying is one of them; what else in such case could be done? So, from motives of humanity to the prisoner, as where a woman was suddenly taken in labor in the course of the trial. But the general doctrine is fixed, that a jury once charged in a capital case cannot be discharged without giving a verdict.

The authorities upon which we rely are numerous and strong. In 1. Inst. 227.¶ LORD COKE says, that a jury sworn and charged in case of life or member, cannot be discharged by the court or any other, but they ought to give a verdict. So in *Cartbew*. 465. this case occurs—*Nota, per* HOLT, Chief Justice, at the sittings in WESTMINSTER, 9. Nov. 1698, in a case of perjury tried before him, between the KING and PERKINS, he said, that it was the opinion of all the Judges of ENGLAND, upon debate between them.

1. That in capital cases a juror cannot be withdrawn, tho' all parties consent to it.

2. That in criminal cases, not capital, a juror may be withdrawn, if both parties consent, but not otherwise.

3. And that in all civil causes, a juror cannot be withdrawn, but by consent of all parties.

And in 2. Stra. 984. in the case of the King and Jess, who was indicted for Barratry;—the prosecutor could not go on for want of a copy of several processses, after he had given some strong proof. Whereupon it was insisted to withdraw a juror, as it was done last term on an indictment against the scavengers of St. Giles', for not paying money according to a justice's order; and there being some unpreparedness, Mr. Abney, one of the king's counsel, consented to withdraw a juror.

The Chief Justice at first inclined to it, but upon consideration held, there was a difference between that case, which may be compared to cases of a civil nature, and this, where the punishment may be infamous, as this

pillory ; and for that reason it has never been done in perjury or forgery. And therefore he refused it in this case.

Among the first cases which appear in the books, where the court undertook to discharge the jury, is the remarkable case of *Whitebread & Fenwick*, 31. Car. 2. 1679. They were indicted for high treason together with three other Jesuits, and upon being arraigned, they objected that they had already been tried for the same facts, a jury charged with them, and the evidence found insufficient, and then the jury dismissed without giving a verdict ; and they apprehended they could not be put in JEOPARDY of their lives a second time for the same cause ; that they ought, at the former trial, either to have been condemned or acquitted—This was certainly an objection of great weight : for every prisoner with whom a jury is charged in capital cases, ought either to be acquitted or convicted at that time—else, instead of one trial, a man may be made to undergo twenty trials for the same fact, when the court find the evidence against him defective. The court, however, answered, that it was in their discretion, to discharge the jury without taking a verdict, where witnesses were wanting, or where there was any accident of the like nature. It is to be hoped that the Counsel for the Commonwealth would not wish to rely upon a case strongly marked with oppression and injustice. Yet upon this case, and some others, in the same arbitrary and corrupt reign, even Lord Hale, great and good as he was, seems to have grounded his opinion of the law, that the court may, under the circumstances he mentions in his 2d vol. 295-6, discharge the jury of the prisoner, and remit him to gaol for further evidence ; and that it had been so practiced in most circuits of England. The learned editor of this valuable work, does not, however, seem to concur in opinion with the text ; for, in a note upon this very point, he combats the doctrine with much force, and mentions, that it hath been since holden for law, that a jury once charged in a capital case, cannot be discharged till they have given their verdict, and the case of *Whitebread* was thought a very extraordinary one : and Mr. Foster, in his report, pa. 30. hopes that it never will be a question again, whether in a capital case, the court may, in their discretion, discharge a jury after evidence given and concluded on the part of the Crown, merely for want of sufficient evidence to convict ; and in order to bring the prisoner to a second trial, when the Crown may be better prepared :—That this was

done in the case of Whitebread and Fenwick, and it was certainly a most unjustifiable proceeding. I hope, he adds, it will never be drawn into example. This case, therefore, by the concurring sentiments of all modern Lawyers, appears to be entirely exploded. How is the case of JOHN HAVER to be distinguished from the case of Whitebread and Fenwick? He was indicted before, for an offence substantially the same as the present—the same murder; he pleaded not guilty; a jury was sworn and charged with him; the whole of the evidence, for any thing that appears upon the record, gone through on the part of the Commonwealth; and then, for want of sufficient evidence to convict, the jury was discharged without his consent or concurrence, or without any reasons for it appearing upon the record; and he is now brought a second time to trial, upon a new indictment, for the same crime. If this is legal, we shall again set up the case of Whitebread and Fenwick, and the most unjust and oppressive consequences must follow from the doctrine. Shortly after the case of Whitebread and Fenwick, we find the Judges dissenting from the doctrine; and in the case of the Lord Delamere, who was tried for high treason, 1. Jac. 2. 4. State trial, 232. upon a question put to them by the Lord High Steward, they unanimously declared, that *where the trial is by a jury, there the law is clear, the jury once charged, can never be discharged, till they have given their verdict, this is clear.* So in Ambrose Rookwoods case. 8 Wm. 3. The Judges refused to discharge the jury, once sworn and charged, to let in exceptions upon a new act of Parliament. 4 State Trial, 664, &c. The general doctrine is recognised in 21 Vin. 343. 478. and in 2 Hawk. chap. 47. sect. 1. it is said to have been anciently an uncontroverted rule, and hath been allowed, even by those of the contrary opinion, to have been the general tradition of the law, that a jury sworn and charged in a capital case, cannot be discharged (without the prisoner's consent) till they have given a verdict; and notwithstanding some authorities to the contrary in the reign of King Charles 2d. this hath been holden for clear law, both in the reign of King James 2d. and since the revolution. The case of the two Kinlock's is reported in 1 Will. 157. Wright. J. insisted strongly that no man can be twice put upon the trial of his life for one and the same crime, NOT EVEN BY HIS OWN CONSENT. And, the reporter adds, Upon the report of this matter to the King, his Majesty was graciously pleased to pardon Kinloch, *ut audiri.*—The authority of Sir William Blackstone, is also express to the point. He

tells us, 4 Black. 360. that, when the evidence on both sides is closed, and indeed when any evidence is given, the jury cannot be discharged (unless in cases of EVIDENT necessity,) till they have given in their verdict. What, then are these cases of necessity? For if the present falls within any of the excepted cases in the books, we are content that the prisoner should undergo another trial. But if it does not, we hope that in Pennsylvania there can be no difficulty how the Court will decide. And altho' the prisoner should be loaded with crimes—altho' we should look upon him with the utmost abhorrence; yet, it is the law of the land that is to be dealt out to him; and if by that law he is, under the circumstances which have happened, intitled to his discharge, the court cannot hesitate to discharge him. The case of the two Kinlocks rests upon ground peculiar to itself—and affords no authority in the present case. Judge Foster, in giving his opinion, considered that case singly as it stood upon the record, and threw out every consideration that was foreign to it. Let us then consider the present case as it appears upon the record. Not a single reason for the discharge of the jury appears upon this record; but as it stands, it must be taken for granted, that the whole evidence was concluded on the part of the Commonwealth: and that there not being sufficient to convict the prisoner, the Court discharged the jury of him, in order to bring him to a second trial when the Commonwealth might be better prepared. Nothing appears to the contrary of this. The record cannot now be altered; we cannot have recourse to our memory as to what passed. The entry is only *“that, on motion of the Counsel for the Commonwealth, the Court discharged the jury from giving any verdict. There was no consent or concurrence of the prisoner; nor does any motive appear for the proceeding. This then is exactly the case of Whitebread and Fenwick which has been so justly exploded. We may observe how cautious they were in the case of the Kinlocks to put every thing upon the record; and the nine judges who determined it, did it upon the peculiar circumstances of the case. The only question there was, “Whether in a capital case, where the prisoner may make his full defence by counsel, the Court may not discharge the jury upon the motion of the prisoner’s counsel, and at his own request, and with the consent of the Attorney-General, BEFORE EVIDENCE given, in order to let the prisoner into a defence, which, in the opinion of the Court, he could not otherwise have been let into”*—and all this was regularly entered, and *appeared upon the record.*

It was out of humanity to the prisoner, and by his own *express consent*, and before any evidence was given on the part of the Crown. It was not the question, whether a jury may be discharged after evidence given, in order to the preferring a new indictment better suited to the nature of the case; where through the ignorance or collusion of the officer, or the mistake of the prosecutor, the fact laid varieth from the real fact, or cometh short of it in point of guilt. Nor—whether in a capital case, the court may, in their discretion, discharge a jury after evidence given and concluded on the part of the Crown, merely for want of sufficient evidence to convict, as was done in the case of Whitebread and Fenwick: but the Court cautiously confined themselves to the peculiar circumstances of the case then before them, and left every other point undecided. This case, therefore, not being the case before the court, is there any other case which will help out the Commonwealth? For we hope we shall not go beyond decided cases. Let them show us, if they can, any other case, besides Whitebread and Fenwick's case, where the Court did discharge the jury without the prisoner's consent, or without an irresistible necessity. The case of Elizabeth Meadow, Fost. 76. was a case of extreme necessity, and the principles of humanity could not permit the trial to proceed. Fost. 327-8. is not a decided case; it is the single extra-judicial opinion of a speculative writer, and ought not to have any influence in deciding this point against the authorities opposed to it. We have endeavored to bring before the court every case, on either side, which we had in our power—We will show one more, in order to show the extent that the Court may go, and the ground upon which only they ought to exercise a discretion in such cases. The case is the KING & GOULD, 2 Burn's J. 16th edi. pa. 718. "The defendant was indicted for murder—" the jury were sworn, and part of the evidence given, but before the trial "was over, one of the jurymen was taken ill, went out of court with the "Judge's leave, and presently after died. The Judge *doubting* whether he "could swear another jury, discharged the eleven, and left the prisoner in "goal. The Court was moved for a writ of HABEAS CORPUS to bring up "the prisoner that he might be discharged, *having been once* put upon his "trial. This being a new case, the Court said they would advise with the "other Judges upon it; and afterwards they all agreed, that the prisoner "might be tried at the next assizes, or the Judge might have ordered a new "jury to have been sworn immediately." This case happened as low down

as 4 Geo. 3. and yet we find the Judges *hesitating*, even in a case of so remarkable a necessity, when the jury by no possibility could give a verdict, whether the prisoner could be put upon his trial a second time.

But whatever the law of England may have been; however it may have varied from time to time, according to the caprice of Judges, under the influence of the Crown, in an arbitrary and corrupt reign; and again fluctuated when the Judges have been more virtuous, and more regardful of the law of the land. The framers of the Constitution of Pennsylvania seem to have intended to put this matter at rest. In the 9th article of that Constitution, "that the general, great, and essential principles of liberty and free government may be recognized and unalterably established, they declare," &c. and in the 10th section of this article, one of those *unalterable* principles they declare to be, that—"no person shall, for the same offence, be twice put in jeopardy of life or limb." When the Constitution of the United States was adopted, it was made an exception by some of the states, that this essential principle was not carried into it; it was deemed a necessary barrier against oppression from the government, and to defend the liberty of the citizen. Accordingly it was afterwards declared, and made part of the Constitution, by the 7th article of the amendments, that "no person should be subject, for the same offence, to be twice put in jeopardy of life or limb."—This, then, as well as the Constitution of Pennsylvania, is the SUPREME LAW OF THE LAND. The Constitution of England is not a written one—They may modify, they may shape it, from time to time, as they may think will best answer the ends of public justice, or of party. But here the Constitution cannot be altered or modified. The courts are bound by it: They cannot step over it: They have it not in their power to violate a single article of it. It limits the very powers, not of the Judges only, but of the Legislature itself.—The court cannot say, as they may heretofore have said in England, the Commonwealth has not been ready; there is not sufficient evidence to convict; we will discharge the jury, and bring the prisoner to trial again, when the commonwealth is better prepared. No—we will set our foot on the line of the Constitution, and can confidently say, that the Court *have not the power to do it at all*.

To conclude. The offences are substantially the same. An acquittal of the prisoner as principal would operate to discharge him as accessory *before* the fact. The power of the Court, if they have it at all, has been exercised illegally in this case; it could not be done, but by *withdrawing* a juror, with the prisoner's consent.—The jury was dismissed by the Court, and no reasons appear on the record for it. We therefore hope and trust, that the Court will discharge JOHN HAUER from this indictment.

C. HALL }
 & } FOR THE COMMONWEALTH
 C. SMITH }

If the counsel for the prisoner have really considered this question as of moment, and that the result may prove advantageous to their client, we feel happy that they have had a patient hearing. They may conceive that the life of JOHN HAUER depends upon the decision of this point; and under this impression, they may deem it an indispensable duty to urge it, on his behalf, with all the force of their ingenuity. Should they fail, they will at least feel a satisfaction in having left nothing undone, which possibly might, in the event, prove beneficial to the prisoner at the bar.

It is true this motion is singular in its form. In the outset, without any plea in bar, by which they would be bound to show the record of *autrefois acquit*, it is a new mode to stop the progress of the trial. They should at least, we suppose, bring the facts before the Court, by some plea, before they would be intitled to be heard. If however, the Court are satisfied, we have no objection to follow the gentlemen in this way, expecting it will save the trouble of going over the same ground in another form.

JOHN HAUER was indicted at the last Court, as a principal in the murder of FRANCIS SHITZ; a jury was sworn and charged with him; a part of the evidence was given; but the prisoner thought proper to make a full confession to two of the Judges, criminating himself as an ACCESSORY BEFORE the fact, and strenuously denying his being the principal murderer. It was in consequence of his OWN ACT, therefore, that the jury were discharged, on motion of the counsel for the Commonwealth, in order that a new indictment might be found, better suited to the truth of the fact. It would

have been improper to have proceeded in the trial to give the prisoner, manifestly guilty by his own confession, a chance of escaping. It would have been injurious to the public justice of the country. A new indictment has been accordingly found; and the prisoner's counsel now contend, that he ought not to be put to plead; that the former jury ought not to have been discharged of him without giving a verdict; and that no man can be twice put in JEOPARDY for the same offence. We on the other hand, hope to satisfy the Court, that what has been done, has been done rightly; that it would be a disgrace to the law, if under the peculiar circumstances of this case, the Court had not, for the purposes of public justice, the power they have exercised. We hope that at this day it cannot be made a question.

Before we proceed, we beg leave to observe upon the concluding part of the lengthy argument we have just heard. It has been endeavored, from what motives we know not, to treat this as a constitutional question, as if we did not regard the rights of our fellow citizens equally with the counsel for the prisoner. In fact, the Constitution has nothing to do with the matter before the Court. It is the construction of the principle the gentlemen rely upon, that is to be looked to. The very principle itself was not first known in this country; we borrowed it from the English law; we inherited it as our birth right from a country where civil liberty is as highly regarded as in any country upon earth. That NO MAN SHALL BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB, for the same offence, is as old as the English law, and was well calculated to protect the subject from the oppression of the crown. It is, as it were, the MAGNA CHARTA of the criminal law. We must therefore understand the meaning of rules and terms, before we undertake to argue from them; and the construction given to this rule in the country from which we derived it, and where it has always been well understood, must guide us upon this occasion; and we hope to satisfy the Court that it does not stand in our way.

We will readily agree that a jury ought not to be discharged without the prisoner's consent, merely because there is not sufficient evidence to convict him upon that indictment, and in order to procure more full proof at a subsequent trial, as was done in the case of Whitebread and Fenwick, which we hope, with Judge Foster and the Counsel for JOHN HAVER, may never

again be drawn into example. But that the Court under no circumstances; even where the purposes of public justice require it, and where without the exercise of such a discretion, the most atrocious offender must escape, to the disgrace of the law, have such a power, is what we cannot accede to. For where, either through the ignorance or inattention, or by the mistake of the prisoner, a bill is sent up, charging one grade of crime, and it turns out upon the evidence that the prisoner is guilty of another grade of the same crime; there is no case which says the jury shall not be discharged, that a new bill may be sent up, adapted to the facts and circumstances attending the commission of the crime. If the Court have the power at all, they must judge of the occasion when to exercise it. It cannot be confined to one case in particular; but must depend upon the necessity which at any time may require it.—But the circumstances being as they are in this case, how stand the authorities? An attentive consideration of them may throw clear light upon this subject. It is true, and the rule ought never to be violated, that where a man is once fairly ACQUITTED upon any indictment, he may PLEAD such acquittal in bar of any subsequent accusation for the SAME CRIME. This plea, says Judge Blackstone, 4 Black. 335, is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy of his life, more than once, for the same offence. But then he must be found NOT GUILTY on an indictment FREE FROM ERROR, and WELL COMMENCED before a Court which has jurisdiction of the cause. 2 Hawk. chap. 35. sect. 1. For if his life was never in JEOPARDY—as where he is acquitted upon an ILL indictment, upon which he could not have been convicted, or if convicted could not have been punished, the plea of *autrefois acquit*, or *convict*, is no bar to another indictment. These cases show the force and extent of the principle the counsel for the prisoner so strongly rely upon, and how it ought to be applied; and to apply it in any other way, would be to render it as a sanctuary for enormous offenders, and not a protection from oppression. 2 Hawk. chap. 35. sect. 3-8.—2 Hale, 247-8.—Fost. 26. Rookwood's case there cited.—6 Mod. 168.—3 P. Wms. 480-481. The prisoner must be *legitimo modo acquietatus*; and he must take advantage of it by plea in bar, *autrefois acquit*, and he must be ready to produce the RECORD of his former acquittal. 2. Hawk. chap. 35. sect. 2. For nothing but an acquittal by verdict on the general issue, finding the defendant INNOCENT, will bar another indictment,—NO OTHER DISCHARGE

of an indictment will do. 2 Hawk. chap. 35. sect. 6. But such acquittal does not exist in this case; the prisoner was discharged from that jury for the very purpose of preventing him from pleading *auterfois acquit*; and we are now to know whether that was done legally or not. But if he had even been acquitted upon that indictment, it would not have availed him; because the indictment is materially defective; and if he had been convicted, he never could have been punished upon it. It is not stated that Francis Shitz, died of the wound received. The words are, "of which said mortal wound he the said FRANCIS SHITZ from the night of the said 28th December in the year aforesaid until the 29th day of the said month of December in the said year, at Heidelberg township in the county aforesaid, and within the jurisdiction of this court did languish, and languishing did live, on which said 29th day of December in the year aforesaid, he the said Francis Shitz, at the place aforesaid; and within the jurisdiction of this Court, did die"—omitting the words, "OF THE MORTAL WOUND AFORESAID"—which omission is supplied in the new indictment; but the defect runs thro' all the counts of the first indictment. Now, however absurd this objection may appear to the grammarian, yet if the law requires this technical precision, there is an end of the present question; this objection alone is decisive—all the precedents warrant this objection;—and so is 2 Hale, 247-8. Vaux's case expressly decided in 4 Rep. 44-5. and in 2 Hawk. chap. 25. sect. 60. it is said, that no indictment of death can be good without an express allegation, that the deceased both received the hurt which is laid as the cause of his death, and also that he DIED of the hurt so received; and the want thereof cannot be made good, by any implication whatsoever. And in the same book, chap. 23. sect. 82. Vaux's case is cited to have been resolved, That an indictment setting forth, That I. S. persuaded the person deceased to take a certain poisonous potion under a notion of a medicine, and that the deceased, *nesciens præd' potum cum veneno fore intoxicatum, sed fidem adhibens dictæ persuasioni dicti I. S. recepit et bibit*, is insufficient, because it doth not expressly say, that the party received and drank the poison; and it was also resolved, that the want of such certainty is not supplied by these words immediately following, *per quod idem N. immediate post receptionem veneni prædicti per tres horas immediate sequentes languebat et oblit &c.* And yet there cannot well be a stronger implication that the poison was taken and drank by him; for it being the STRICT RULE of law in these cases to have

the substance of the fact expressed with precise certainty, the Judges will suffer no argumentative certainty whatsoever to induce them to dispense with it. For if they should once be prevailed with to do it in one case, the like indulgence would be expected from them in others nearly resembling it, and then in others resembling those, and no one could say where this might end; which could not but endanger the subverting one of the most fundamental principles of the law, by giving room to Judges by arguments from what the jury HAVE found, to convict a man of a fact which they HAVE NOT found. (Vide, Fitzg. 263), and in the 83d sect. of 2. Hawkins, it is further laid down, that the count ought expressly to shew that the party died of the hurt specially set forth; and it hath been resolved, that an indictment setting forth that the defendant choaked the deceased, *qua suffocatione obiit*, instead of *de qua suffocatione*, &c. is erroneous, 1 Roll's Rep. 137. 2 Inst. 318.—and in Long's case, 5 Rep. 122b. the defendant was indicted for discharging a gun upon Long, "*dans eadem Henrico Long mortale vulnus*," and doth not say *percussit*, for which reason the indictment was held insufficient; because in all indictments for murder, they ought expressly to allege a stroke given, and they shall not be supplied either by argument or any intendment whatsoever. S. C. cited 3 Mod. 202. It is therefore evident, from these authorities, that the first indictment was so materially defective, that if the prisoner had been convicted, he never could have been executed upon it. The Court must, upon motion have *quashed* it, and the Attorney General has entered a *nolle prosequi* upon it before he sent this second indictment to the grand jury.

But let us consider the two points made by the prisoner's counsel, in the order they have made them, and whether either of them can be of avail.—

Lord Hale does indeed lay it down as the law, that one indicted as principal and acquitted, shall not be indicted as accessory BEFORE, and if he be, he may plead his former acquittal in bar, for it is in substance the same offence—but the antient law was otherwise. 1. Hale 626. and this seems to be admitted in Kel. 26. But notwithstanding this weighty authority, it may reasonably be doubted whether it is sound law, or can be supported upon principle. It certainly is not an uncontroverted point, but remains still open for judicial decision, whenever the case shall be fairly brought before the Court. And when the counsel for the prisoner rest upon Hawkins, Foster

and Blackstone as confirming this doctrine, they rest upon an unsolid foundation; for as far as the doubts of these great and truly learned men can do it, they have weakened the authority of Lord Hale. Even the authorities cited by Lord Hale from the year book of Edw. 3. and Fitzherbert's abridgement—Corone 150 & 282. do not warrant the doctrine in its full extent. Hawkins says only that it is HOLDEN in many books of good authority, (CONTRARY TO WHAT IS ADMITTED TO HAVE BEEN THE ANTIENIENT LAW) that the acquittal of a man as principal, is a good bar of a subsequent prosecution against him as accessary BEFORE; for it is said that such an accessary is in some measure guilty of the fact, and therefore that an acquittal, which clears a man from being guilty of the fact, doth by consequence clear him from being such an accessary. And this seems reasonable UPON THE SUPPOSITION that a man may be found guilty of an indictment against him as principal, upon evidence which only proves him to have been an accessary BEFORE. But if a man cannot be found guilty of such an indictment upon such evidence, as it is strongly holden that he cannot, it may WITH GREAT REASON be said, that the acquittal of him as principal, no way acquits him as accessary BEFORE; for if so, he might save himself by a mere slip in the indictment, and bar all other prosecutions by an acquittal on a trial, which in truth never brought him into danger of his life. And it is upon this supposition, as I suppose, that it is holden in some books, contrary to those above cited, that one who has been acquitted as principal, may be tried again as accessary BEFORE, as well as AFTER 2 Hawk. chap. 35. sect. 11.——

Now it is well known, that, in detailing the different opinions upon any subject, Serjeant Hawkins always gave his own in the last place; and he appears evidently opposed to the principle set up by Lord Hale and others. The many books of good authority which he refers to, are Kelyng. 25-6. 1 Hale, 626. 2 Hale, 244. Crompton's Justice, 42. 112. 2 Edw. 3. 20. Fitzh. Corone, 150. In support of his own opinion, he refers to Keilway, 107. Dalison, 14. It is certainly true that the prisoner could not have been convicted as a principal upon evidence which proved him only an accessary BEFORE the fact. If we are right in this, then how absurd it would be to say that an acquittal upon one indictment shall be a bar to another indictment, where the evidence on each of them must be specifically different; where the same facts cannot apply to both; and what would be sufficient to convict upon the one, could not apply, or serve to convict upon the other.

If the evidence in both cases was the same, then there might be some reason for the law ; but as it is, altho' in point of crime and punishment, the offences are equal ; yet as the circumstances are different, tho' tending to the same mischief, the law gives to them a different consideration. But if they are to be considered as the SAME offence, and an acquittal of a man as principal, will bar an indictment against him as accessory BEFORE ; how still more absurd it is that the principle should not hold throughout. Yet we find it AGREED, 2 Hawk. 16. sect. 12. that an acquittal of a man as accessory BEFORE, is no bar to a subsequent prosecution against him as PRINCIPAL. Is it possible to reconcile the inconsistency ?—It appears, however, by no means to be a settled point ; nor has the practice been uniform ; for in 2 State trials, 798. Samuel Atkins was tried on two several indictments ; first, as principal, and next as accessory in the murder of Sir Edmonsbury Godfrey. Sir Michael Foster, whose opinions upon the subject of the Crown law, are entitled to great weight, considers this point in pa. 361. 362. and is very far from adding strength and authority to the rule. Speaking of the connection between principals and accessories, he says, “ yet in consideration of law their offences are quite different ; and for that reason, I presume, “ it is, that if A. be indicted as principal, and B. as accessory, and both are “ acquitted, yet B. may be indicted as principal in the same offence, and his “ former acquittal is no bar. 1 Hale, 625. On the other hand, it SEEM- “ ETH to be agreed (1 Hale, 626. 2 Hale, 244.) UPON WHAT GROUNDS I “ KNOW NOT, that if A. be indicted as principal and acquitted, he cannot “ be afterwards indicted as accessory BEFORE the fact. “ For,” say some, “ IT IS IN SUBSTANCE THE SAME OFFENCE.” Others, (Kel. 25. 26) “ If a man inciteth to the offence, HE IS QUODAMMODO GUILTY OF THE “ FACT.”

“ *In foro cæli* this is true. In the sight of God, Ahab was the actual murderer of Naboth. “ Hast THOU,” saith God to him by the prophet, “ KILLED and also taken possession ? ”—In the place where dogs licked the blood “ of Naboth, shall dogs lick thy blood, even thine.” 1 Kings, xxi. 19. And in the case of Uriah, God, by another prophet, saith to David, “ THOU “ hast killed Uriah the Hittite with the sword,—and slain him with the sword “ of the children of Ammon.” 2 Sam. xii. 9.

“ But is it also true in *foro seculi*? By no means. For in the eye of
 “ the law the offences of principal and accessory SPECIFICALLY differ, and
 “ fall under a quite different consideration. The point in the case reported by
 “ Kelyng, 25—26. which was of an accessory after the fact, was at length
 “ settled upon sound principles of law and reason. But the reasoning
 “ upon that case founded on a distinction between what preceded or was
 “ subsequent to the fact is, I confess too refined for my comprehension; and
 “ probably will continue so, till I can remove antient land-marks, and for-
 “ get the legal distinction between principals and accessories, and every prin-
 “ ciple of law founded on it. For if the offences of the principle and
 “ accessory do, in consideration of law, SPECIFICALLY differ; and if a
 “ person indicted as principal cannot be convicted upon evidence tending
 “ BARELY to prove him to have been an accessory before the fact, which I
 “ think must be admitted, I do not see how an acquittal upon one indictment
 “ could be a bar to a second for an offence specifically different from it. In
 “ the case I first stated it was no bar, why therefore in the second?—

“ This I offer as a doubt of my own, which is submitted to the opinion
 “ of the learned.”——

So far Judge Foster. We will admit, that, if after this, Judge Blackstone
 had considered the law as settled upon reason and authority, it would have
 thrown an almost insuperable difficulty in the way. But he does not, as
 one of the prisoner's Counsel has said, speak of it as a SETTLED point. But
 referring to Hawkins and Foster, and not attempting to remove their difficul-
 ties, he says, “ it is a matter of SOME DOUBT, whether, if a man be acquit-
 ted as principal, he can be afterwards indicted as accessory BEFORE the fact;
 since those offences are frequently very near allied, and therefore an acquittal
 of the guilt of one, may be an acquittal of the guilt of the other also.” No man,
 therefore, reflecting upon the reason of the law as laid down by Hale and in Kel-
 and considering the weighty objections against it, can undertake to say that is
 by any means a settled point. We on the part of the Commonwealth, think
 there is so little reason in it, that we can hardly doubt, but that, whenever
 this case, which is still open for a final decision, shall come before the Court,
 they will not hesitate to decide that an acquittal of a man as principal is not
 any bar to an indictment against him as accessory BEFORE the fact. If we

are right on this first ground made for the prisoner, and even an **ACQUITTAL** of him on the former indictment, could not be pleaded to the present one, it makes an entire end of the question; and whether the discharge of the former jury was legal or illegal; whether it was done regularly or irregularly, it can make no difference. But as long as the **DOUBT DID REMAIN**, and it turned out upon the evidence that he could not be convicted as principal, but only as accessory before, more especially as this was induced by his own confession and conduct, and in fact became a matter of necessity and propriety, it would not have been right for the Court to have given him the chance of pleading *autrefois acquit*; the public justice required that so notorious an offender should not escape. We contend that it was fair and just. The propriety of the measure, however, brings us to the last ground of argument.

As to this great point, the prisoner's counsel rely on the authority of 1 Inst. 227. b 3 Inst. 110. Carth. 465. 2 Stra. 984. 4 State trials 232. Lord Delamere's case; and 664 Rookwood's case; 2 Hawkins chap. 47. sect. 1 and some other cases which we will endeavour to answer. The opinion in Hawkins as well as in the other cases is grounded upon Lord Coke's doctrine in 1 Inst. 227. b: but if this can be shown to be itself without a foundation, at least not an inflexible rule, then the fabric they have been raising upon it, must fall with it, whatever darkness may have rested upon this subject before, yet since the great consideration it received in the case of the two Kinlochs, there can remain no doubt now as to the power of the court to discharge a jury in certain cases, wherever a necessity for it may exist. If the power is once admitted then the court, and the court only, can be the judges when it may be proper to exercise it. But Kinloch's case is said to be by the consent of the prisoner. We apprehend this makes no difference. For if the law of the land is, that the court have not the power to discharge a jury once sworn in a criminal case, then no consent could give it to them. If they can do it by consent, they can do it without.

With respect to the case of the King & Jeffs, 2 Stra. 984. the Court were certainly right in refusing to discharge the jury, because the prosecutor was not ready with some of his proof, without which he could not proceed. Had they discharged the jury, it would have been exactly the case of Whitebread and Fenwick, 2 State trials, 715. 831. 832. which has been so much condemn-

ed. We do not contend for the principle of that case. Besides all the cases cited for the prisoner, are cases where the second jury must have come to try the SAME indictment. Even this; it is admitted, may be done in certain extreme cases. But they do not apply here; because this is the case of a new indictment, we say for a different kind of offence, requiring different evidence; and where the evidence which would have been adapted to the former indictment, would not convict him on the present one. Have the gentlemen shown any case where this may not be done? they tell us Foster puts the very instance, and they would infer that he disapproved of it. His language is, in his celebrated argument in the case of the Kinloch's "The question is not, whether a jury may be discharged after evidence given, in order to the preferring of a new indictment better suited to the nature of the case: where through the ignorance or collusion of the officer, or the mistake of the prosecutor, the fact laid varieth from the real fact, or cometh short of it in point of guilt. This was frequently done, he adds, before the revolution; and in one or two instances since." Fost. 30. Now it appears to us from his mode of putting the case, that he was certainly of opinion that the jury might in such case, be discharged; and he even cites Kelyng 26, where the very thing now done was done in that case. The gentlemen have told us that case in Kelyng was long since exploded; but they have not shown us how or where; unless they refer to the followers of Lord Coke. It may be well to remark that Lord Holt was the publisher of Kelyng's reports, and if he had had any difficulty about the power of the court in this respect, he certainly would have suggested the doubt, as he has done in two instances in pa. 13 and 41, for the consideration of the learned. And in pa. 47 and 52 of the same book, it seems to be well agreed that the court may discharge the jury, and take no verdict, and then indict the prisoner over again, and these cases are all after evidence given. And in the case of the King versus Segar and Potter, on an indictment for burglary, the jury was discharged, after evidence given, without any question as to the right and this was in the 8th. Wm. 3. Comb. 401. The Counsel for the commonwealth have ventured to refer the court to 2 Hale, 295. 296. 297. More we suppose, for the sake of the note by the editor of that work, than for the text, which is directly against their proposition, and where the law is carried much farther than we contend for in this case. The jury was not discharged in this case for want of witnesses, or because they were kept out of the way; but solely for the purpose of preferring a new

indictment, suited to the truth of the fact; for the sake of public justice, and not for oppression, or to try the prisoner a second time on the same indictment, when we might expect better and fuller evidence. It was for the purpose of trying him for an offence of which he was guilty, and not one of which he was not guilty. If the cases put by Hale are law, then the authority is very strong for us; for he lays it down, notwithstanding the authority of my Lord Coke, "that nothing is more ordinary than after the jury sworn, and charged with a prisoner, and evidence given, yet if it appears to the Court, that some of the evidence is kept back, or taken off, OR THAT THERE MAY BE A FULLER DISCOVERY, and the offence notorious, as murder or burglary, and that the evidence, THO' NOT SUFFICIENT to convict the prisoner, yet gives the Court a great and strong suspicion of his guilt, the Court may discharge the jury of the prisoner, and remit him to the gaol FOR FARTHER evidence, and accordingly it hath been practised in most circuits of England, or otherwise many notorious murders and burglaries may pass unpunished by the acquittal of a person probably guilty, where the full evidence is not REACHED OUT OR GIVEN." It is not necessary for us either to approve or disapprove of the cases put by Lord Hale. None of them are like the case before the Court, though much stronger; but as to the Editor's note, it is certainly not composed with critical accuracy; more especially when he refers to Lord Delamere's case as the ground of his opinion; which we shall show, by and by, is not at all applicable to the question he was considering. Let it however be said, that Lord Hale was one of the most cautious and humane Judges whose history we know any thing of; and was very far from stretching either law or prerogative for the sake of oppressing the subject. And Judge Foster, in the argument before cited, referring to 1 Vent. 69. where a jury was discharged, after they were sworn, and the trial put off, because the witnesses were suspected to be tampered with by the prisoner, says, "this is not the present question, and I give no opinion on it; only let it be remembered, that Lord Chief Justice Hale justifieth this practice, which, I think, prevailed in his time; and had long prevailed, by strong arguments drawn from the ends of government, and the demands of public justice."—What appears most strange to us, is, that the prisoner's counsel should have mentioned Lord Delamere's case as an authority for them, when they must have known that the cases are by no means parallel; more especially as they could not have been ignorant of the answer already given to it by all

the Judges in *Kinloch's case*. 4 State trial, 230. 232. after a lengthy examination of evidence on the part of the Crown, the prisoner, Lord Delamere himself was desirous of an adjournment. "May it please your grace," said he, a great part of the day is spent, and I would beg the favor of your grace, that I may have favor till to-morrow morning to review the notes I have taken, and then I shall make my defence." The Lord High Steward doubted of his power to adjourn, calling to mind, perhaps, the old tradition of the law; a considerable conversation then ensued; the Lord High Steward was willing to adjourn, if he could by law. Lord Delamere. "My Lord, I shall hardly be able to finish all I have to say in any convenient time this day." Lord High Steward. "But, my Lord, if an adjournment cannot be by law, I cannot help it." At length the point was referred to the Judges; and they did give their opinions as has been stated on the other side. But what was the question? Not whether the court had the power to discharge the jury altogether, or not, which is the present question; but whether a jury once sworn in a capital case could be adjourned without giving verdict. The case of an adjournment was what they had then in contemplation, and not the case of a total dismissal of the jury. "In the common courts, said the judges, where the trial is by a jury, there the law is clear, the jury once charged can never be discharged till they have given their verdict, this is clear; and the reason of that is, for fear of TAMPERING with the jury." Now if the jury were totally dismissed, the danger could not happen, for they would never be called again upon the trial of the prisoner. The Judges refused to determine as to the power of the Lords; they only said, that the reason why a common jury could not be adjourned, failed in that case; for there was not the least presumption that the Lords, who were persons of great integrity and honor, could be prevailed upon in that way. But the Lord High Steward refused to adjourn. Now there is not a circumstance in the case of Lord Delamere analogous to the question before this court. 4. Black. 360. goes no further. It says the jury cannot be discharged (unless in cases of evident necessity) till they have given in their verdict. But the JUDGES may ADJOURN, while they are drawn to confer, and return to receive the verdict in open court. Judge Blackstone is here evidently speaking of the manner of proceeding in the trial, and not as to power to discharge altogether; and although he refers to 1. Inst. 227. & Inst. 110. we are to show that they are not of conclusive weight; how

right as laying down a good general rule. But even if the case of the Lord Delamere was applicable to the present case, we are able to show that it is broken in upon, and is no longer the law; but the Judges have assumed the power to adjourn even in a capital case. And upon the authority we shall cite, this court, upon the former trial, did adjourn, and had four constables sworn to keep the jury together. In 6. Term Rep. 530. The King against William Stone. The Court adjourned the jury. Lord Kenyon observed, "that necessity justified what it compelled. And that though it was left to modern times to bring forward cases of such extraordinary length, yet no rule could compel the court to continue longer sitting than their natural powers would enable them to do the business of it"—accommodations were therefore prepared for the jury, and six bailiffs were sworn "well and truly to keep the jury, and neither to speak to them themselves, nor suffer any other person to speak to them touching any matter relative to this trial."

Ambrose Rookwood's case proves nothing for the prisoner. The jury were not indeed discharged in that case. But if the exceptions had been allowed, the indictment must have been quashed; and the jury then sworn and charged must have been discharged without giving a verdict; yet, says Judge Foster this could not have operated so as to discharge the prisoner from answering to another indictment for the same offence. Fost. 36. Whatever weight, therefore, there is in this case, it is against the prisoner. A discharge upon a defective indictment, no more than an acquittal, could not avail him. 21. Vin. 343. 478. and 2 Hawk. ch. 47. sect. 1. are both grounded on my Lord Coke, 1. Inst. 227. b and can be of no greater authority than my Lord Coke himself: it is only citing the same case three or four times over, without affording additional authority. The opinion of Sir Martin Wright has also been mentioned, in the case of the Kinlochs, out of 1 Will. 157. It is true, Sir Martin Wright was a very learned Judge. But of what consequence is the opinion of a single Judge against the solemn judgment of his nine associates, equally learned as himself? The King against Perkins, mentioned in Carthew, 465. is brought forward to govern this case. In the case of the Kinlochs the Judges paid no attention or regard whatever to that authority; and said it was doubtful whether there ever was such a resolution or no. That at all events it was an extrajudicial opinion. Carthew, therefore, is quite out of the question; it had no weight with very learned Judges.

in England, in considering this very question ; it can have no weight here ; its authority is impeached and destroyed. Decisions quite to the contrary have taken place since. See *Fost.* 27. 28. 36. 37. we consider Lord Coke, 1 *Inst.* 227. *b.* 3 *Inst.* 110. as the great cornerstone upon which the gentlemen hope to rest the system which they have so industriously been building up. My Lord Coke's authority, therefore remains to be inquired into. With the assistance of Foster, we hope to satisfy the court, that it places no obstacle in the way. The Judges in *Kinloch's case*, *Fost.* 27. agreed "that admitting the rule laid down by Lord Coke to be a good general rule, yet it cannot be universally binding : nor is it easy to lay down any rule that will be so." Again, by Foster himself, *pa.* 29. 30. "I take it to be one of those questions, which are not capable of being determined by any general rule that hath hitherto been laid down, or possibly ever may be. For I think it is impossible to fix upon any single rule which can be made to govern the infinite variety of cases which may come under this general question, without manifest absurdity ; and in some instances, without the highest injustice."—Again, *pa.* 31. 32. "It seems that an opinion did once prevail, that a jury, once sworn and charged in any criminal case whatsoever, could not be discharged without giving a verdict ; but this opinion is exploded in *Ferrar's case*, and it is there called a COMMON TRADITION, which had been held by many learned in the law."

"My Lord Coke was one of those learned men who gave into this TRADITION, as far, at least, as concerneth capital cases ; and he layeth down the rule in very general terms, in the passages which have been cited on behalf of the prisoners from his first and third Institutes."

"The same rule is laid down in *Hale's Summary* of the pleas of the crown ; a very faulty incorrect piece ; never revised by him, nor intended for the press."

"But as his Lordship, in his history of the pleas of the crown justifieth the contrary practice, his authority is clearly on the other side of the question : and his authority is the more to be regarded, because he had seen and well considered the passages cited from Lord Coke ; though I believe the

rule, as it standeth in his Summary, hath contributed not a little to the confirming many people in Coke's opinion."

"My Lord Coke layeth down the rule in very general terms ; but he hath not given us any of the principles of law or reason whereon he groundeth it. He hath, indeed, in his first Institute, cited one, and but one authority in support of it, and that authority doth not, to my apprehension, in the least warrant it."

The authority which Coke cites is 21 Edw. 3. 18. Foster goes on to consider that case ; which was the case of a man indicted for larceny, who had pleaded NOT GUILTY, and when the jury were at the bar prayed to become an APPROVER ; which was refused consistently with the rule laid down by Stanford Pl. Cor. 144. *b* Bro. Corone, 42. and which prevailed for a long time, that a person who had once pleaded to issue, could not after that be admitted to a confession in order to save his own life, by charging other persons supposed to be his accomplices in the same fact. But this rule was afterwards relaxed, vide 2 Hale, 228. of course the only authority which Lord Coke relied upon for the support of his rule, is itself destroyed. With regard to this point, says Foster, pa. 34. "the admitting, or not admitting persons to become approvers, was always considered as a matter of MERE DISCRETION in the Court ; as a matter of grace, and not of right : and yet we see, that in a matter of mere discretion, the Court did frequently, upon the special circumstances of the case, discharge juries, after they were sworn and charged, and had in part heard the evidence."

"These instances must therefore be considered as so many exceptions to the general rule ; tho', I confess they do not come up to the case of discharging one jury, and bringing the prisoner to his trial by another.

"But still they show, that the rule now contended for on the part of the prisoners, cannot be true in the latitude the words import : and I think they do in part show, what I hinted in the beginning, that no general rule can govern the discretion of the Court on this question in all possible cases and circumstances."—

In *Manfell's case*, 26. Eliz. 1. and 103. 104. The jury was discharged by the prisoner's consent; and he was tried again by a second jury and hanged; and it was agreed by all the Judges, that it might, and had often been done. In the case of one *Ferrars*, against whom an information was exhibited for forgery, it was resolved by all the Justices, that although the jury be charged and sworn in the case of a plea of the Crown, yet a juror may be drawn or the jury dismissed, contrary to COMMON TRADITION, which hath been held by many learned in the law. *Tho. Raym.* 84. and in 1 *Vent.* 28. it is noted to have been said by Serjeant Maynard, that after all the evidence given in an information, the King's counsel may, without the party's consent, withdraw a juror, and try it over again; and so he said it was done by *Hobart*, Attorney-General, 5 Hen. 7. and in the Exchequer by *Noy*, in King Charles the first's time. What then becomes of the inviolability of Lord Coke's rule? We not only find cases frequently in opposition to it, but Judges of the first reputation dissenting from it in the latitude it is laid down. But, say the Counsel for the prisoner, the exceptions to the rule are either cases of extreme necessity, as the instance put by *Foster*, pa. 34. of the man in a phrenzy pleading to an indictment, and it appearing to the Court, on the trial, that he is mad, the Judge, in discretion, may discharge the jury of him, and remit him to gaol, to be tried after the recovery of his understanding. 1 *Hale*, 35. And the case of *King and Gould*, where one of the jurors died; or where it may be done of humanity, as in the case of *Elizabeth Meadows*, *Fost.* 76. who was taken in labour pending the trial; or out of regard to the life of the prisoner, as in the case of the *Kinlocks*, to let them into a defence they could not otherwise have had. It is true, all these are cases depending upon particular circumstances; but then an infinite variety of other cases might happen, which would equally require the interposition of the Court. For if once the power of the Court is admitted, as the gentlemen certainly have admitted it in these cases; then all their arguments apply only to the IMPROPER EXERCISE of that power. The Court must judge of that; and, in this instance, they have thought this a proper case to call forth their extraordinary powers. But precedents are not wanting to the very point; for in the case of *Ann Hawkins*, cited from the manuscript of Mr. Justice Tracy, in *Fost.* 38. We cannot distinguish the circumstances attending it from those in the present case. In that case it was found, UPON THE EVIDENCE ON THE TRIAL, that the fact was not truly

laid ; thereupon the jury was DISCHARGED OF THAT INDICTMENT, AND
 IT WAS AMENDED ; and the prisoner tried upon the AMENDED indictment.
 We would be glad to know what answer is to be given to this case.
 The case of Elizabeth Meadows has already been observed upon ; it most
 certainly establishes the power of the Court to discharge in opposition to
 Lord Coke. And again, in Fost. 327. 8. where the learned Judge is argu-
 ing upon the difference between MURDER & PETIT TREASON, he proceeds
 thus : “ But if through a mistake on the part of the prosecutor, or through
 the ignorance or inattention of the officer, a bill be preferred as for murder,
 and it should COME OUT IN EVIDENCE, that the prisoner stood in that sort
 of relation to the deceased which rendereth the offence PETIT TREASON, I
 do not think it by any means adviseable to direct the jury to give a verdict of
 acquittal. For a person charged with a crime of so heinous a nature, ought
 not to have the chance given him by the Court of availing himself of a plea of
autrefois acquit. In such case I SHOULD MAKE NO SORT OF DIFFICUL-
 TY OF DISCHARGING the jury of that indictment, and ordering a fresh in-
 dictment for petit treason. In this method the prisoner will have advantage of
 his peremptory challenges, and the public justice will not suffer. This then
 is decisive language. But what is the answer given to it ? It is called a
 chamber opinion, and speculative reasoning.—But when a Judge of Foster’s
 reputation, with his knowledge and experience, who had previous to this
 deliberately considered the subject ; who had heard it exhausted, and every
 case relative to it brought before him for his judgment and decision in the case
 of the Kinlochs, by very learned counsel ; who had weighed the rule laid
 down by Lord Coke, and reflected on all its consequences ; when such a
 Judge with the whole light and learning of a century before him, declares
 that he would not HESITATE to discharge a jury under circumstances like the
 present ; it is something more than chamber opinion or speculative reasoning.
 He must have been satisfied it was the law of the land, well settled and long
 established. A Judge of Foster’s extreme caution and great learning would
 not have ventured the expressions, if there had been any doubt of the law.
 But what have we said, or what can we say, that has not been already much
 more ably said in the books upon the same point. We cannot see any force in
 the objections which are made, and we confidently leave them with the court.
 But it is further objected that the reasons of the discharge of the jury are not
 entered upon the record. We are very indifferent as to that.—If it has so

happened we apprehend it cannot alter the case. If indeed we were bringing the prisoners to a second trial upon the SAME indictment, it might be necessary that it should appear on the record why the former jury was discharged; if the record should be defective, it might be taken advantage of in arrest of judgment. But this is not the SAME record; it is a new indictment; nothing of what passed before appears upon this record, nor can they move in arrest of judgment for that cause upon the record in this case. If they choose to enter the plea of *autrefois acquit*, let them try it; they must then produce the record. We believe it cannot avail them. If we thought it at all material, we apprehend it is not too late to amend the entry, upon the authority of Douglas, 362. [377] where Lord Mansfield said it was impossible to believe there was such an absurdity in the law, as that a mere mistake of the officer should be without a remedy. And he mentioned a case of one Gibson who had been tried for robbing Mr. Francis, and convicted, and a mistake being discovered in the verdict, upon consultation with all the Judges at his chambers, it was corrected from minutes signed by the jury, and the prisoner executed. So here, if, by any inattention, the entry is defective, the court, who have taken full and correct notes of every thing that took place, might amend the entry by their notes; but as we conceive it altogether immaterial, we do not move it at present.

Upon every ground, therefore, we pray that the prisoner may be ordered to plead, and that we may proceed upon his trial.

F I S H E R, C L Y M E R & D U N C A N, in Reply.

We apprehend the ground we have taken, that where one is acquitted as principal, he cannot be again tried as accessory BEFORE the fact, is settled and incontrovertible. It was one of the reasons mentioned at the last Court, why the jury ought to be discharged. We think it then fell from the Court. The present inquiry is, whether the discharge of the jury from the prisoner, at the last Court, amounts to an acquittal. The Court will never regret the patient hearing they have given to our objections. Whatever may be the result; whether they shall discharge him, or order him to plead, they must be better satisfied that it has undergone a deliberate consideration, than that the difficulty should occur, or be suggested when it might be too late. As things have happened, we are induced to believe that a hair of the prisoner's head can never be touched upon the present indictment.

We have heard much said about the discretion of the Court. The discretion of the Court, in a case like the present, where the life of a man is at stake, is a strange idea to us ! If there is any case where the law should be fixed and inflexible, it is in a capital case. The life of a citizen is never to depend upon arbitrary will, or private affection ; and though discretion is nothing but exercising the best of one's judgment upon the occasion that calls for it, yet if it be wilfully abused, it is CRIMINAL. When applied to a court of justice, it means SOUND discretion, GUIDED by law. It must be governed by RULE, not by HUMOUR. It must not be ARBITRARY, VAGUE and FANCIFUL, but LEGAL and REGULAR. Arbitrary discretion, said C. J. Pratt, afterwards the illustrious CAMDEN, is contrary to the GENIUS of the COMMON LAW OF ENGLAND, and would be more fit for an eastern monarchy than this land of liberty. Co. Lit. 227.—1 Burr. 560. 570.—4 Burr. 2539.—2. Wilf. 138.

Does the discharge then amount to an acquittal ?—We think we have shown that this indictment is for the same offence, and that the prisoner ought not to be twice put in JEOPARDY for it : and that a jury having been once sworn in his case, and discharged, he never can be put upon his trial again ; and that therefore such discharge has the same operation as an acquittal upon record.

There are two exceptions to the case in *Ventris*. 1st. It is not a capital case. 2dly. It is a case in the time of Charles the 2d. And tho' such a practice might have crept into the Courts in that arbitrary reign, the good sense of after times has entirely exploded it.

But it is said that this was a case of necessity. We take the case of necessity to be such an one as the wit of man cannot foresee ; of course it can only be remedied when it really occurs. But a confession to a Judge, after the trial has commenced, is not of that extreme kind. If that would warrant a discharge of the jury, the case must frequently have occurred in England ; and yet we find no case in the books where a jury was ever discharged upon that ground. This, therefore, is a new case. Will the Court be *assenti* in adding to the cases of extreme necessity, for the sake of getting at the prisoner ? We know of but two such cases, which have been cited at the bar. For

the honor of Pennsylvania, perhaps it is reserved to discover a **THIRD**, like the present. If the Courts give an opening, by deviating from the rigid rules of law; bad Judges, at a future day, may apply this decision to cut down honest and innocent men. Suppose Mr. Attorney would now refuse to proceed against the prisoner upon this bill, as accessory, but indict him back again as principal; what would this lead to—what would be the consequence?—The Court will observe the caution used in Kinloch's case; every minute particular is entered upon the record, that the ground upon which the Court went might forever appear; and that it should not operate as an authority upon the general question. That is then an authority standing alone. In the present case no consent is entered, nor any other reason; why the jury were discharged in this case no where appears; the record, in this respect, is defective. In Kinloch's case it was expressly entered, **THAT NO EVIDENCE WAS GIVEN**. But it is said that this may be supplied, and the reasons for the discharge now entered from the notes or minutes taken by the Court. We apprehend not. In Co. Lit. 260. *a* it is laid down, that during the term when any judicial act is done, the record remaineth in the breast of the Judges of the Court, and in their remembrance, and therefore the roll is alterable during that term, as the Judges shall direct, but when that term is past, then the record is in the roll, and admitteth no alteration, averment, or proof to the contrary. We say that this Court, more especially as it is a criminal Court, have not the power to add to, or alter the record of the former Court of Oyer and Terminer.

But it is said the first indictment is defective, and we are called upon to support the goodness of that indictment. The counsel for the Commonwealth are now willing to acknowledge a mistake of their own, for the sake of punishing the prisoner. The question is of some importance to the prisoner; for if the indictment is so bad that no judgment could have been rendered on it, he must answer again. We undertake, however, to show that it is a good indictment. It is said to be defective, because it does not state, that **FRANCIS SHITZ DIED OF THE MORTAL WOUND**. If this indictment is construed by the rules of common sense, grammar or law, then it is clearly supportable. The indictment, to be understood, must be read together; the whole count must be considered in one connected point of view; it is unquestionably one sentence, and cannot be divided. It is sufficiently certain that the deceased

DIED OF THE MORTAL WOUND; these expressions are connected with the whole sentence, and runs through the whole of it; to repeat it would be tautology. No Judge can hesitate upon the point; on reading the indictment it is impossible for any one to say that it is not evident upon the face of it that **FRANCIS SHITZ** died of the mortal wound received from the prisoner. It is not like the case of poison; that case stands alone. It would be necessary there to state that the deceased died by the poisoning; because death is not absolutely the certain and natural consequence of poisoning; a man may be badly poisoned, and yet not die; there are powerful antidotes to poison, which will effectually counteract it. But when it is stated here that the deceased received a **MORTAL** wound, and that he afterwards died, can any one suppose, for a moment, that it was not of the **MORTAL** wound he died? For unless death followed, the wound could not be **MORTAL**. The indictment would have been good without stating that the deceased **LANGUISHED**. The **LANGUISHING** may be struck out as **SUPERFLUOUS**: it will then read thus: "OF WHICH SAID MORTAL WOUND THE SAID FRANCIS SHITZ ON THE 20th DAY OF DECEMBER IN THE YEAR AFORESAID, AT THE PLACE AFORESAID, AND WITHIN THE JURISDICTION OF THIS COURT DID DIE." But read it as it is: it is all one sentence, and the mortal wound refers to and runs through the whole. In 2 Hawk. c. 25. sect. 60. it is said the law will not admit of too great nicety of this kind; for it hath been adjudged, that if in the first part of an indictment of death, the assault be laid with malice prepense, &c. there is no need to repeat it in the following clause, &c. But if the Court should even doubt whether the indictment is good or not, that doubt should operate in favor of the prisoner. In the Crown Circuit Companion, altho' most of the precedents are the other way, there is one precedent exactly like the present, and from which this was probably taken. It is the case of Captain Kidd.

HENRY, President.

To contravene Hawkins, which is expressly in point, it will be necessary for you to produce some adjudged case different from it to raise a doubt. A mere precedent, particularly in the case of capt. Kidd, who was tried for a variety of offences, can have no such operation; unless you show further that a motion was made in arrest of judgment upon it, and that it was held sufficient, by the judgment of the Court. Kidd's counsel might not have

thought it worth while to have taken notice of such an objection, as he was convicted upon a variety of other indictments for capital crimes.

MR. DUNCAN. I own there are considerable doubts.

HENRY, President. You had better confine yourself to this point. If you can remove the difficulty we will hear you.

The prisoner's counsel hearing the opinion of the court, did not proceed in their argument. They however filed a kind of a plea for the prisoner, protesting that he was not guilty, and setting out the first indictment, (*in bac verb*) and stating the discharge of the jury, and concluding in this way, "wherefore the said John Hauer prays judgment if the court here will farther proceed upon the indictment aforesaid against him, and that he may be dismissed from the court here of and upon the premises, &c.

The Attorney General demurred thereupon, and the court instantly overruled the plea, and ordered that the prisoner should plead over to the indictment.

HENRY, President.

On this plea, which brings into question the legality of the indictment against the prisoner, filed at the last court of Oyer and Terminer, we have no hesitation to say that it is defective in one material point, to wit, the not having laid that Francis Shitz died of the wounds he received. Upon this point Hawkins is express and decided. The Court being clear in this, and the circumstance being conclusive, it is unnecessary to decide the general question; we leave that, therefore, where it is, without giving any opinion upon it. But if this were a case similar to the case of Whitebread and Fenwick, we should not hesitate to declare that to discharge a jury after they have been sworn, and to postpone a trial for the sake of getting better evidence on a second occasion, without any thing more in the case, is detestable and ought never to be practiced.

Let the prisoner be put to plead to the indictment.—

CLERK of Oyer and Terminer.

How say you, John Hauer, are you guilty of the felony whereof you stand indicted, or not guilty?—

The prisoner said nothing.

COURT. Ask him again.

CLERK of Oyer and Terminer.

How say you, John Hauer, are you guilty of the felony whereof you stand indicted, or not guilty?—

The prisoner was silent.—

MR. C. HALL, for the Commonwealth.

We pray the court, as the prisoner stands mute, and will not plead, to order the plea of NOT GUILTY to be entered for him, according to the directions of the act of Assembly, 3. State Laws, 119. sect. 5.

The Court, considering that the prisoner stood mute from obstinacy, ordered the plea of NOT GUILTY to be entered for him on the record; which the Clerk did accordingly, and the Attorney General thereupon joined issue.

HENRY, President.

Mr. Attorney, how do you mean to try the prisoners?

MR. HALL. We mean to try Hauer, Cox and Donagan together.

MR. HOPKINS. We hope that they may not be tried together. It would be a very unfair proceeding. We are willing to try Cox and Donagan together, and will enter into any stipulation to join in the challenges. We think, as the case is circumstanced, it ought not to be insisted on to try them together. We hope the Court will recommend it to the Counsel for the Commonwealth to try them separately.

HENRY, President.

We have nothing to do with it. The Attorney General may proceed as

he thinks proper. I know of no other way you have, but to sever in your challenges, and exhaust the pannel.

Let the trials of JOHN HAUER, PATRICK DONAGAN & FRANCIS COX come on to-morrow morning at 8 o'clock.

MEMORANDUM.

The foregoing arguments are blended together from the observations of all the counsel. It would have occasioned much repetition, and have extended this trial to a very unreasonable length, to have given the speeches of all the counsel separately.—The same plan will be followed in summing up the speeches and observations upon the evidence.

FRIDAY, JUNE 15th, 1798. 8 o'clock, A. M.

The three prisoners were brought to the bar.

Messrs. HOPKINS & CLYMER mentioned to the Court, that their clients Donagan & Cox wished to say something to the Court.

The President then asked them, separately, what they had to say to the Court.

They then stated to the Court, that they did not wish to be tried along with John Hauer who had confessed himself guilty; and hoped the Court would suffer them to be tried by themselves.

MR. HOPKINS then renewed his motion, that the two prisoners should be tried distinct from Hauer; and prayed the Court to recommend it to the Attorney General to consent to it.

The Court said, if the counsel would show them that they had a power to interfere, and direct the Attorney General how he should conduct the trial, then perhaps they would exercise a discretion; but until then they would not interpose, because they believed no such power vested in the Court.

N. B. See upon this point Richard Noble's trial. 9 State trial, Haregrave's edition, pages 3. 7. 11. and the remarks thereon.

MR. THOMAS ELDER thereupon read a memorial from Patrick Donagan & Francis Cox, stating that they were natural born subjects of his Britannic Majesty, and as aliens, by the laws of PENNSYLVANIA, were entitled to a trial by a jury *de medietate linguae*, and therefore prayed, that as to them, the array &c. might be quashed. At the request of their counsel, the prisoners were then sworn, in open Court, as to the truth of the matter stated in their memorial.

The Court ordered the memorial to be filed.

ELDER cited Dallas 73. The case of the four Italians.

HOPKINS. When this matter was mentioned at the last Court, it created doubts in my mind; particularly when the case in Dallas is brought into view. In that case the prisoners were *Italians*; and between their country and this, there is no reciprocity as to a trial by jury. This case is therefore stronger; because in England, of which country these men are subjects, an American would be entitled to the same mode of trial.

C. SMITH, for the Commonwealth.

However this might be, if it stood singly upon the case in Dallas, we do not apprehend to be now necessary to enquire. Yet even in that case, the court appear to have decided with great reluctance, and seem to have wanted nothing but a plausible reason to have rejected the motion. That case, however, is grounded upon a particular reason, viz. the extension of the British Statute of 28. Edw. 3. by the constitution of Pennsylvania; which Statute had been in force in the Province previously to the revolution. But such Statutes are only to remain in force until ALTERED by the Legislature.— But since that decision in Dallas, the Legislature have altered the mode of summoning and impannelling a jury by the balloting act, passed the 19th March 1785. 2. State Laws, 262. Since which, no jury can be summoned in any other way than is directed by, and under the authority of that act. The reason of the case of the Italians, therefore, entirely fails; and it

would be highly inconvenient if the law should have continued agreeably to that decision, for very obvious reasons. In England the Statute still remains in force as to criminal cases. But in civil cases, to which only the English balloting act extends, Judge Blackstone makes the same question, whether the court there have now a power to direct a pannel to be returned *de medietate linguæ*, and thereby alter the method prescribed for striking a special jury, or balloting for common jurors. 3. Black. 360.

HOPKINS cited 2 Hale, 271.—As to the act of assembly we conceive it to be only directory to the Sheriff, and not binding on the Court. The Sheriff is merely a ministerial officer, and is bound to obey the precepts and injunctions of the Court. But here we lay a ground for a *venire de medietate linguæ* before the Court, previous to the Sheriff having any thing to do with it; and if the Court directs such *venire* to him, he is equally bound to execute it.—

The Court in addition to the act of assembly, mentioned the case in Dyer 304. and 2 Hawk. ch. 43. sect. 41. and said they were of opinion that the prisoners were not entitled to this challenge and accordingly overruled it.

CLERK of Oyer and Terminer. Cryer make proclamation.

CRYER. Oyes, Oyes, Oyes, you good men of the county of Dauphin, summoned to appear here this day to try between the Commonwealth of Pennsylvania, and the prisoners at the bar, answer to your names as you shall be called, upon pain and peril shall fall thereon.

Then the jury who were returned on the pannel, were all called over, and the appearances of all those that answered to the call, were recorded. 72 jurors appeared. Note: 80 jurors were summoned and returned, under the authority of the 4th. section of the balloting act of 1785.

The court fined the defaulters £.3 each.

CLERK of Oyer and Terminer.

You, the prisoners at the bar, these good men, whom you shall hear called, and do now personally appear, are to pass between the commonwealth and you, upon trial of your life and death. If therefore you will challenge them, or any of them, your time is to challenge them as they come to the book to be sworn, and before they be sworn.

The counsel for John Hauer declined making any challenges on his behalf.

CLERK. Call Jacob Greenawalt.

JUROR. Here.

CLERK. Juror, look upon the prisoners. Prisoners look upon the juror. Patrick Donaghan, do you challenge him? Challenged, by Patrick Donaghan. He was then set aside as to all.

CLERK. Henry Berry.

JUROR. Here. Juror, look, &c. Patrick Donagan, do you challenge him? Not challenged.—CLERK. Francis Cox, do you challenge the Juror?—Challenged by Francis Cox. The juror was then likewise set aside as to all the prisoners.

CLERK. Thomas M'Elheney.

JUROR. Here. CLERK. Juror, look, &c. Patrick Donagan, do you challenge him? Not challenged. CLERK. Francis Cox, do you challenge the Juror? Not challenged. CLERK. John Hauer, do you challenge the Juror? John Hauer refused to answer.

The Juror was then sworn.

In the same manner they proceeded till a full jury was sworn. Donagan and Cox challenging alternately, with an apparent view to have as few Germans as possible sworn upon the Jury.

THE JURY SWORN WERE,

1. THOMAS MELHANY,
2. SAMUEL STURGEON,
3. JOHN BLATTENBERGER,
4. HENRY M'CORMICK,
5. SAMUEL COCHRAN,
6. WILLIAM CRANE,
7. JOHN WILSON, JUN.
8. JOHN NORTON,
9. JOHN PARTHIMER,
10. JAMES JOHNSON,
11. HENRY FULTON,
12. JOHN SNODGRASS.

NOTE. William Porter was called, but set aside by the Court, he not being a citizen of the United States when summoned. Mr. Porter being a man of a fair reputation, the counsel on neither side made any objection to his being sworn; but the Court thought it right and prudent, on account of the principle, to reject him.

The Clerk of Oyer and Terminer read the indictment, and charged the jury.

Mr. HALL opened the evidence much at large, with great force and perspicuity.

JOHN DENTZEL, Esq. was sworn as Interpreter: a number of the witnesses not being able to speak English.

EVE DOEBLER, (sworn.)

Francis Shitz went to Philadelphia about five weeks before Christmas. While he was away, John Hauer came to the house, and asked if Peter slept alone in the chamber. I said, yes. He said, one could frighten him cursedly. I told him that any person would not go out of the house as he

same in. Hauer said, why? Has Peter got his rifle there yet? I told him I had seen none as long as I had been there. Then he went into the room and chamber, and searched about. He came out again, and said he could not find any thing but a dram bottle. He then drank a dram out of it. There was a little boy, called George Deefinger present; and he asked him to drink a dram. The boy asked me if I would drink a dram too; I said yes; but when I went to drink, the boy knocked the bottle, and the dram was spilled; I then told him to take the bottle into the room; which he did.

[The witness then went into a detail of the dreadful scene on the night of the murder; but as it is given at large on the trial of M'Manus, to avoid repetition in this, and in the case of all other witnesses who were examined on that trial, such testimony will only be referred to—except where they may have proved additional matter, as in the present instance.]

CROSS EXAMINED.

I never saw Francis Cox in the neighbourhood of Shaser's town before the murder.

I saw Patrick Donagan only once at Shitz's; he came with a man, I did not know, to buy hogs.

SAMUEL REX, Sworn. (See his evidence on the trial of M'Manus.)

When we were at Shitz's house, the night of the murder, we proceeded to search whether or no the house had been robbed. We went into the back room and examined the chest. There was no appearance of any violence to the property; we all concluded there had been no design to plunder. Our suspicions immediately fell upon Hauer. Eight or ten armed men then started to Hauer's, and we waited till they returned. When they came, Mrs. Hauer fell down at the bed side, and cried bitterly. Hauer sat down on the bench and did not say a single word. The maid insisted that Francis had been shot; we searched, but could not find the wound. Hauer then said, you had better look, may be he was shot in the mouth. I told him I thought not; and he said nothing more: he looked very much dejected. (Pistol shown.) I believe this pistol to be the same which was

found in the house; it appeared to have been newly fired; upon a person blowing in it there came forth a strong smell of gunpowder. We afterwards discovered that the ball had followed the track of his right ear. He had four gashes on his head, which appeared to be done with a sharp instrument. He died about 10 o'clock the next morning.

CROSS EXAMINED.

I do not know that I ever saw Cox in that neighbourhood.

I have frequently seen Patrick Donagan before the murder. He had made his home at Hauer's about a twelvemonth. I have heard that he was industrious, and worked about as a jobber: I don't know that he ever did a day's work about Shafer's town.

When we had been at Shitz's house a little while, I think it was 1 o'clock.

LEONARD DORBLER, Sworn. (Exactly as before. See his evidence on M'Manus's trial.)

GEORGE BAKER, (Sworn.)

I was at Valentine's, in Shafer's town, the day before the murder happened, cutting wood for him. Hauer stood at the market house, and called me to come to him. He told me I should come out to his house to thresh oats for him. I said I would come out. But Hauer said, no, you won't come. He asked me again if I would come, and I said, yes. He again said, you won't come. "I had better leave the horse for you here." He left the horse for me, and I went out. It was half an hour after 10 o'clock when I came to his house. When I came there, I wanted to know where to put the horse. I went up to the house, knocked at the door, but nobody answered. I then took the horse to the stable. When I wanted to put the horse up in the stable, Hauer called out to me not to put the horse in that stable, but in the other. When I went into the house, Hauer was in bed near the window; Mrs. Hauer was sitting on a chair asleep. I asked Hauer, where was Pat. Donagan. He said he rode down to Illig's the morning. I then asked, where is Betsey, Charles M'Manus's wife? Hauer

said, Charles fetched her away, but he did not know which way they went. I stripped myself and laid down on a bench. I slept on the bench till 9 o'clock; then Hauer rose, and drew out a small bed where the children used to sleep, and told me I should sleep there. I slept there till two o'clock in the morning—I waked, and saw Hauer standing before the stove, making a fire. I slept again about half an hour, when the people came, about ten of them; they were all round about me, and Swanger halloed to me and I awoke. They all went up to Shitz's, and I went along.

I had often worked at Hauer's before, and slept there. Hauer always before made me sleep in another room,—in the old room. The old room is on the left hand as you go into the house. The kitchen is between the old room and the room where Hauer slept, which is at the other end of the house.

CROSS EXAMINED.

The night was not very cold. I had slept before in Hauer's house, in Summer and Winter; but never slept before in the room where I slept that night. When I came there in the evening, Hauer got up and opened the door for me. I fell asleep before Hauer told me where to sleep. One child slept in the bed with me. There was no stove in the old room. It did not seem to me to be very cold. I do not know whether Hauer had any oats to thresh or not. He had two horses in the stable, besides the one I brought. There was a little moon-light that night. I am 18 years old. As far as I know Hauer was not out that night. Pat. Donagan used to sleep in the old room. I helped one day last Harvest, when Donagan was there. Charles M'Manus was there. I slept with Charles M'Manus in the old room; he was not married then. I never saw Cox in that neighborhood. There was a feather-bed in the old room; one might sleep comfortably enough there in cold weather. When Hauer let me in, he looked as if he had been asleep. When I saw him at the stove, he had striped trousers on, and nothing else.

NICHOLAS SWANGER, (Sworn.)

About three or four weeks before the murder, Hauer, came to my house. He told me he was bad off. I asked, for what? He said, his father-in-law, old Shitz, came every night to his house—that he came as a white ghost. I said, I

could not believe that—if there was any such thing, the ghost would have been in his own house, where he died. I told him I did not know what he could do there. He said, I can tell you that. I asked him what it is. He said if the two boys would agree to make another will, so that he might have a better share, old Shitz would settle himself, and come no more there. He told me I should go down and tell them boys; I told him I would not go down—that I did not believe such things: and I did not go. That is all I know about the ghost.

On the night of the murder, 8 or 9 men called on me; they told me what had happened, and wanted me to go along to Hauer's house. I went along with them. When we came to Hauer's house, we kept still a little, to watch if we could see any one running; but we could see nothing. Deefinger called out "John Hauer!" and as soon as he was called, he opened the door, and had a candle in his hand ready lighted. As soon as he opened the door, he went back with the candle; we went in with him. He said nothing at all, but set the candle on the table, and went behind the stove. We told him he should get ready and come along with us, his brother-in-law was in a bad way. He and his wife, and a boy that was sleeping there, one Baker, got ready and went along with us. Hauer said nothing at all.—when we came to Francis Shitz's we went into the room to see him. Hauer looked over his shoulder, a little, at him; and immediately went behind the stove, and said nothing,—I did not perceive how he looked at his own house—I could not see his face: he had his hat much flapped over his face. When he opened the door for us, at his own house, he made no enquiries of us—did not ask us what we wanted, nor what brought us there that time of night.

Patrick Donagan had lived a year, or a year and an half at Hauer's house before the murder was committed. He had his home there the night of the murder, as far as I know. I can't tell how he got his living.

CROSS EXAMINED.

I can't tell whether Donagan was industrious or not, because I never had any connection with him. I never heard of Cox being in that neighborhood before the murder was committed.

I think it was near THREE o'clock when we came to Hauer's house. We were not half an hour going from Hauer's to Shitz's. I think it was about 2-o'clock in the morning when the people came to my house to get me along with them.

CHRISTIAN HOFFMAN, (Sworn.)

I lived with old Shitz before his death. About six weeks after he died, Hauer came to the house; he told me something came to his house every night, and it was half white and half black, and called his (John Hauer's) wife three times by her name. I said to Hauer, I wonder what that can be for. Hauer said,—I think, if old Shitz HAD DIVIDED HIS ESTATE SHARE & SHARE ALIKE, IT WOULD NOT BE SO.—I said I could tell nothing about it. Hauer told me to tell the boys this. I did tell them. It is about three years ago. This time three years ago, at hay-making, Hauer came to work for Francis Shitz. After supper, he bade good night, and went out of doors. After the family had gone to bed, something came in the house, and rattled and made a great noise. Francis Shitz went down and looked, but saw nothing. He came up stairs again. After a while it began again, and seemed like the rattling among old iron. Francis Shitz came to my bed, and told me to go down, and look what it was. I went down stairs; and went from the stair-case to a small chamber adjoining the room. From thence I went into the room. From the room I went into the kitchen—I could see nothing in the kitchen; but there is a small room under the stair case—not very large. I opened the door of it, and reached in to it with my hand, and caught some person on the breast: I perceived it WAS A HUMAN BEING, and dragged him out—and it was—JOHN HAUER! Then, when I got him out, he laughed. I asked him what he was doing there. He told me I should not tell the boys; but I did tell them,

Hauer told me it was the ghost of old Shitz that had come to his house; and he told me if I did not believe it, I might come and see it.

The will of old Peter Shitz was then read in evidence to the jury. It was dated on the 8th of April, 1795—and proved on the 30th of April, 1795. Immediately on the death of Peter Shitz, Hauer entered a CAVEAT against the probate; but not being able to lay any ground to contest the will, he

relinquished the CAVEAT by letter to Andrew Forrest, Esq. the register of wills, in Dauphin county, on the 29th of April, 1795. Shortly after which the ghost was first conjured up, as appears by the testimony of Christian Hoffman.

Doct^r JOSEPH STAUSE, (Sworn.)

'The last battalion's day, the 18th of October, 1797. Hauer and his wife came to me, at my shop in Lebanon. Mrs. Hauer wished to be bled. I did bleed her. Hauer asked me if I had not in my shop, a medicine, which he called WIEDERKOMME drops. I told him I had not; nor did I know any medicine of the kind. He told me if I had them I should not be afraid to give them to him; he meant to do no harm with them; If I would let him have about a gill, he would give me TWENTY dollars. He then said, he was convinced I had those kinds of drops, as he had got them from other physicians before; that he knew physicians generally objected to sell them. I told him I really had nothing of the kind, or I would give it to him with pleasure if I had them. He then said he was convinced I had them, and if I would let him have a gill he would give me TWENTY pounds. I told him I really had not the medicine. He then asked me if I would not write to the city, and get them for him from the apothecary. I promised him I would, in order to get rid of him; and he and his wife went off. About two weeks afterwards, he came to me again, in company with Pat. Donagan, and asked me if I had got those drops for him. I told him I had not, I had no opportunity of writing. Pat. said he was convinced I had them in my shop, and would not give them to him; he said he had got some previous to this at Bethlehem; and some of Dr. Luther. I declared to him I had them not. Then Hauer pulled out a bag of money; he said it contained FIFTY pounds; I believed it did, for it was a large bag of dollars. He then told me, if I would give him a gill of those drops, he would give me that money. I told him as before, I had not got them. I asked them to describe the colour and smell; perhaps I would know what they wanted. Hauer could not describe the smell; but he pointed to a bottle that was standing on one of the shelves, which was of a dark brown, and said it had that colour. I told him I did not know by his description what it was.—Pat. then began to talk. He seemed VERY ANXIOUS and PRESSING to have those drops; and said, if I would get him the drops, he would ride up to Harrisburgh, to Dr. Luther, and get the Latin or English name of them, that I

might send to Philadelphia for them; as I did not know the German name: He said Dr. Luther must know the name of them, as he had got some from him before, BUT THEY WERE NOT STRONG ENOUGH.—I told him if he would do that, get me the Latin name, I would certainly get him the drops from the city.—On this they left me.—I asked them what the intention of them was—what they wanted them for. They smiled and did not tell me. I said to Pat, I suppose you want to try projects with these drops. He smiled, and said, yes. Pat. appeared to me to be far more solicitous to have them than Hauer. The colour in the bottle they pointed at was very much the colour of LAUDANUM.

CROSS EXAMINED.

It appeared to me extraordinary, so much money being offered; and I mentioned the circumstance to Frederick Hubley. They laid me under no injunctions of secrecy.——As an apothecary, I would have sold a gill of LAUDANUM for a dollar. But I would give no man a gill of LAUDANUM, unless I knew what he wanted to do with it, or could judge of the effects of it.—I sell large quantities of ARSENIC; I would have sold them an ounce of that for six pence: that would have been enough to kill any man. The Germans buy a good deal of it, but they do not ask for it by the name of ARSENIC: They generally come for RATS-BANE.

JOHN FOX, (Sworn.)

I was asked by Squire Shæfer to carry Hauer to goal. When we were on the road, I said to him, John, this is a very bad affair which has happened; and you seem very much to be blamed; and it would be my advice to you, if you know any thing about the business, to inform of it. Tell me or some other person, it will be a benefit to you. He said he was clear of it, he knew nothing about it. I travelled on with him a mile or two, and put the question again, and told him it would be much in his favor, for, by the judgment of the whole neighborhood, he knew something about it. He then asked me, if it would clear him in case he would turn state's evidence. I told him it certainly would, and it would be his best way to inform, if he knew any thing about it. I will say nothing more, said he, till I see a lawyer. I told him a lawyer could do him no more than another. He gave the same answer again. We came riding on——I said, John, I wish

I could come up with the two villains, that I might get the 300 dollars that are advertised. He said, if I could get bail, and go over the river with you, to night, we could get them 300 dollars. Well, said I, John, who have you suspicions of? He said, I have suspicions of Peter M'Donough. I asked him what reasons he had to suspect Peter M'Donough. He told me, that Peter M'Donough had asked him if the Shitz's had a good deal of money by them. That at another time he had told him he never would work any more, and he would live very well. And, he said, Peter M'Donough was at work over the river, and he could get him that night, and asked me if I would be one of his bail. I told him we would see about it when we got to Harrisburgh. We came to Harrisburgh. He wanted to see Mr. Fisher. Mr. Fisher was not within. His next choice was Mr. Patterson; he was not at home. He then made choice of Mr. Laird. Mr. Laird came down with me to Mr. Zeigler's. We took him into a back room. Mr. Laird told him it would be prudent to tell every thing he knew about the business. Hauer asked Mr. Laird, if it would clear him, if he would turn state's evidence. Mr. Laird told him the Court could not pardon him, it must depend upon the governor. He would then tell nothing, and I put him to gaol.

The confession of John Hauer was next read to the jury; in the following words, as it was taken down, and signed by him, before the president of the Court.

DAUPHIN COUNTY, }
SECOND DISTRICT, ff. }

The deposition and examination of John Hauer late of Heidelberg township in the county of Dauphin, farmer, now confined in the jail of the county of Dauphin aforesaid, and upon his trial in the Court of Oyer and Terminer and general jail delivery holding for the same county, for the murder of a certain Francis Shitz, his brother-in-law, taken before John Joseph Henry, Esquire, President of the same Court, and John Gloninger, Esquire, one of the judges thereof, this sixteenth day of March in the year of our Lord 1798. The examinant saith, that he and Patrick Donagan talked about Peter Shitz having [committed some offence, of which there is no testimony; it is therefore improper to insert it] that Donagan said it would not be so bad to kill such a fellow—examinant said to him, he would kill no one

unless he was overcome with rage—Oh, said Donagan, for a few hundred pounds I would get hands to put both away—examinant need not look about him for it—examinant agreed to it. Donagan told examinant he should mention it once to Peter M'Donoughy—examinant spoke to him of it accordingly, in the new barn at Illigs, where he was eating grapes—M'Donoughy said he did not like to do it, but he would mention it to his brother Hugh M'Donoughy. Afterwards Peter and Hugh M'Donoughy went down to Hacks, where Charles M'Manus was digging a mill race to speak to him, whether he would not be concerned: This was about oat-harvest. Charles M'Manus came up, and he and examinant rode over to Peter M'Donoughy's in the night time. Upon talking of it that night they gave up the scheme. At that time examinant had not informed Peter M'Donoughy nor Charles M'Manus of the names of the persons to be killed. The matter was thus depending till flax-breaking time, which was the week after the last Supreme Court at Harrisburg—Then Peter M'Donoughy's wife came over to examinant's house and called Patrick Donagan away from the flax-break. He, Donagan, went with her to her husband. There they agreed how the murder should be done. When Patrick Donagan came home he told examinant the manner they settled to do it. He said Peter M'Donoughy, Hugh M'Manus and one Patrick (who is now in town here) would commit the murder. But that Hugh M'Manus and THAT Patrick would have one hundred pounds in cash after it was done, which Donagan must pay them. The affair, then, went to nothing because Patrick Donagan did not get the money from Illig who owed him money. Peter M'Donoughy in the same week gave Charles M'Manus nine pounds to purchase the pistols and knife at Lancaster. It thus depended for a time, and as Charles M'Manus told examinant, he had informed Francis Cox, James Evans, and a shoemaker who lives in Manheim in the county of Lancaster of it. The shoemaker and Cox, as Charles M'Manus said, were to go with him to Geiger's tavern, if it was necessary to be witnesses that he remained in the house. In the winter afterwards when examinant and Patrick Donagan, were cutting wood in the woods, Peter M'Donoughy and Charles M'Manus came to them. It was then concluded between them to commit the murder on the night upon which it was afterwards executed. Charles M'Manus proposed that the people in the house should all be murdered and the house burned that no jury could be had on their bodies. To this

Peter M'Donoughy agreed ; but Patrick and examinant would not agree to it, because of the guiltless persons who were in it. Indeed Patrick Donagan always said he himself could not undertake it, it was against him, but he would get people to do it, and so he did too—Peter M'Donoughy had money due to him from one Elfer, on Middle creek, with which he purchased a mare from one Frederick Bollman in Meyer's-town, to give to Charles M'Manus that he might go away with after the murder. In the winter just before Christmas Peter M'Donoughy and Molly Farley rode down to Manheim to Charles M'Manus to speak to him about the murder. Peter M'Donoughy afterwards told examinant that Charles M'Manus said, if examinant would give it up, he, Charles, would shoot him through the head. Peter M'Donoughy said they would meet at Lebanon. Examinant went to Lebanon, on that day which was the Sunday before the murder, where he put up at Bowman's tavern. Charles M'Manus came thither, examinant told him nothing should be done. Examinant said nothing to Peter in Lebanon, but he overtook them as they were watering their horses in Quittapahilla—they stopped at Geiger's tavern. When they left Geiger's, examinant told Charles M'Manus the murder should be given up. Upon this Charles said to Peter, if this is given up, then we will rob Graybill and Shenk of their money. The next day Charles M'Manus went to Peter M'Donoughy's, when the affair was begun afresh. Patrick Donagan told this to examinant, and said if it was not pursued up they would kill examinant—upon which examinant said to Patrick, he was bad off ; if they do it, he would be hanged—if he refused, they would kill him. Patrick told examinant to get some person into the house with him who might be witness of his being at home—Patrick Donagan told examinant that as a token for Charles M'Manus, Peter M'Donoughy was to lay a handkerchief in the horse-trough if strangers were in the house when he came there on the night the murder was to be committed ; if no handkerchief was in the trough, he might come straight in ; and that he would get out of the house by a hole in the wall. Molly Farley took a pistol and two candles which Patrick Donagan gave her, to Peter M'Donoughy's house ; but examinant does not know that she knew of the intended murder. On the night of the murder the examinant was not out of his house, he was at Shæfers-town that day, and took George Baker home with him, who he really wanted to thresh oats, and also to be a witness for him, if the murder took effect that

night, which examinant was still doubtful of.—Since coming to jail he asked Patrick Donagan how Peter M'Donoughy got out of the house ; he said it was all one ; but if examinant discovered he would go to the Gallies and they would be hanged.—Since coming here the examinant has had no conversation with Peter M'Donoughy about the murder—and he had no opportunity to speak to Charles M'Manus.—That at this time the examinant does not recollect any thing more particular and material of the matter.

JOHN HAUER.

Sworn and subscribed the day and year first

above written, before us,

JOHN JOSEPH HENRY,

JOHN GLONINGER.

JACOB MILLER, (Sworn.)

This witness was called to prove that Pat. Donagan was in company with M'Manus, when he had the two pistols, one of which was afterwards found in the house of Fr. Shitz. (See his evidence on M'Manus's trial, from which he did not vary.)

CROSS EXAMINED by Mr. Hopkins, he said—

Patrick Donagan did not countenance M'Manus in opposing me in any way. James Logan and his wife were in the same room. Pat. Donagan kept his home at Hauer's. I have seen Donagan and M'Manus frequently associating together. I have been in the tavern drinking with them too ; but I thought no harm of it.

Hauer and Donagan were very intimate, and frequently rode together.—But it is not uncommon for a person who boards with another to go backwards and forwards with him.

The conviction of Charles M'Manus as principal, read to the jury.

MATTHIAS ORNDORF, called,

MR. HOPKINS. Are you a doctor?

WITNESS. I am a sort of a doctor—I want to say it in Dutch I can't speak good English.

COURT. You can speak well enough—you must tell your story in English, as well as you can.

WITNESS, (Sworn.)

It is about a year, or not quite, or may be longer, Pat. Donagan came to me, and said he an't well, he got it in his stomach, in his limbs, he is quite weak, if I would not know any thing that would be good for him.—So I tell'd him, yes, I think a phyfic would be good for him. So he said a few words, I don't know rightly myself what it was, and went off, and didn't take no phyfic. In about 8 or 10 days after that, he came again, and told me he believe he'll take a phyfic along now, and so I give him one; a phyfic, what you call it, a julap powder; and when he went away from me he met with old John Shenk. **PRESIDENT.** How do you know that? **WITNESS.** He told me himself. Then he told old John Shenk his sickness, that he has it in his stomach, and was very weak. So old John Shenk told him he should go along with him, he had a vomit that would be better for him: and he took it, and he told me he is sicker. I told him to take the phyfic now. So he took it now, and came again, and said he was no better. So I sold him **SOME YERBS**—sage and cammomile.—

In feeding-time, a good while after, he came to me again, I was plowing in the field, and asked me if I had no drops called "**WIEDERKOMME PROPS**" I told him no, I never heard the name of it that I know'd. He said, I thought you had. I asked him what use they are for. He said they were drops to take inwardly, to make a man so light as drops can make him. I told him I had some drops that would make a man so light, but I don't call 'em **WIEDERKOMME DROPS**, I call 'em stomach drops.—He said, no, no, them an't the drops. I asked him if he ever had any such drops. So he said, yes. I asked him where he got 'em. I think he said he got 'em once from Dr. Luther, but that was not the real stuff.—I told him I don't think there are such drops: he said yes, he knows who got such drops. I asked him who got such a drops: he told me old Fahnstock: he was down by old Fahnstock, and asked him for such a drops, and old Fahnstock looked down on the floor,

and look up again, and laughed a little, but said nothing; and he thought he laughed and made fun of him, and then he went away. Then he asked me if I would not ride down for him to old Fahnstock's, and get him a gill of such drops: I told him no—He asked me why? I told him I don't like it, I AM A SORT OF A DOCTOR TOO. He told me I should go; it was too far to the apothecaries, but not far to Fahnstock's and he would give me £.10 if I would get him a gill of such drops. I laughed at him, and he laughed along. I told him them are dear drops, they must not just be for taking in. Yes, surely, surely, said he, they are for taking in. I told him, may be, by and by, I'll ride to Lancaster, and if the apothecaries had such, I'll fetch some up. He then said, that was too far, but if I would go to Fahnstock's, he would give me £.25 if I would fetch him a gill. I told him, no. Then he said, if you'll fetch me a gill of them drops, I'll give you ONE HUNDRED DOLLARS, or a brown horse. I told him, I had not time. He said, you can loss a day for so much money. I told him I don't like to go from feeding. So I promised him to go in 8 days after that. When them 8 days were over, he came just on the day. Then he asked if I was down. I told him no, I had not time yet. So he asked me when I would go down now. I told him, may be in 8 days, or thereabouts, may be I get better time. So when the time was over, he came just pretty nigh on the day. So he asked me if I were down. I said no, I had not time yet. So he said, you makes very long. So he asked me when I would go now. I said in 8 or 10 days. So, when the time was over he came again. He came another time, when I was threshing. He asked me if I was down. I told him no. So he seems VERY ANGRY AT IT. He told me, if I would not look for such drops, he knows somebody that will get them; but he likes to give me the money sooner as somebody else. So I promised him then to go down the next day. So he told me, may be your horses are tired; you can ride one of mine; and he took of the saddle and bridle off his own horse, and let him go in the yard. The next day I went to Fahnstock's. When I came home, he came the next day. So he asked me if I got such a drops. I said no. He asked me what Fahnstock said: so I told him. He said old Fahnstock was a jockey, and did not like to give them away.

At an election in Shæfer's-town; for I don't know what, a captain or a major—I don't know—The Church was consecrated about that time. Pat.

was in the town. Old Kapp was sick. Old Keller did doctor Kapp: Pat. came to me and told me old Keller was in the town, and told me to go to him and ask HIM for such a drops. So I went to him. When I came back, Pat. asked me what he said. So I told him. So he said old Keller was a right old jockey, he did not like to give the drops. Hauer was in the town too. Then Pat. and Hauer went together in Stoler's tavern in Shæfer's-town. They spoke together. One of them said, I think it was Hauer, if £.500 wont do it, £.1000 must. I heard them speaking of the WIEDERKOMME DROPS.

After this I met Pat. He put his hand in his pocket, and gingled money, and said here is £.50 if you get such drops.—

CROSS EXAMINED:

I was two yards, or thereabouts from them at Stoler's, when they were speaking of the drops. It was in the back room; there was a good many there, I can't tell if any body else was as nigh as I was; other people might have heard it. They were sitting.

I got no receipt from Dr. Keller for the WIEDERKOMME DROPS. He said if I came down to him, he would give me a few lines how to make them. He told me nothing about ghosts.

The Court and jury being greatly fatigued, adjourned at 9 o'clock at night. Four bailiffs were sworn to keep the jury together, according to the precedent of the KING AND STONE 6 Term. Rep. 530.—

Saturday, June 16th. The Court met at 8 o'clock; A. M.

DR. JACOB KENIGHMACHER, affirmed.

PATRICK DONAGAN came to my house at Ephrata, a few weeks before Christmas—in company with one Hugh Tamminy and he asked me if I had any WIEDERKOMME DROPS—I told him no, it was a medicine that never came to my knowledge, and I would look through some of my books to see if I could find out what it was—he then told me he KNEW who had them, it was old Dr. Tryon; he knew that he had about a quart of it in

his house at that time; that he had sent a person there, but he did not get any; he knew that if I was to go up, I could get them; and if I would get a gill, he would pay me for my trouble £.25 or he would pledge it in a neighbour's hands; as he did not wish I should go to any trouble for nothing for him; and he would bind himself in the sum of 1000 or 10,000 dollars, I don't recollect exactly; that he would not HURT A LIVING CREATURE WITH THEM; and if I intended to undertake it for him, he would return towards evening again; I should take it into consideration. He then went off, and returned in the evening again, and asked me then whether I would undertake it for him—I do not recollect what answer I gave him, but I did not like to have any thing to do with it; and he went off. It struck me as being very strange. I don't remember that I asked him what he intended to do with these drops, but he appeared very anxious for me to get them for him. He mentioned something about Fahnstock and Keller, but I forgot what.

CROSS EXAMINED.

He did not enjoin secrecy upon me—Hugh Tamminy lives a quarter of a mile from me. He was present during all this conversation—he is a tolerably reputable man—He went away a little before Pat.

PETER SHATZ, (Sworn.)

Three years ago against next harvest, my brother Francis went to haul stones for the new church at Shafer's town. When he came home he could not unhitch his horses. He thought the rest of us were not so sick, that we might do it; and he sent for us to the field, where we went to rake oats to feed the horses, but we could not do it. Hoffman and the girl, that is now his wife, and two other girls, and Hoffman's son John, were in the field. We were all so sick we vomited all the time. Hoffman was not quite so sick as the rest of us, and he fed the horses. The vomiting continued all that day; and the next day we felt very weak. Hoffman's wife, who was then a maid in the house, cooked the breakfast that day; it was coffee and bread and butter. We never had been affected so before. I don't know if any strange person had been about the house that day. Hauer often came there about that time; I cannot tell how often; but he went about the house wherever he pleased.

Last fall was a year I had hired myself to Jacob Shitz, my father's brother's son, at Tulpehocken. Hauer, with whom I then lived, had gone over to Francis Shitz's. When he came back, I told him I was going on Sunday to Jacob Shitz's. On Sunday it rained, and I could not go. Hauer then told me I should not go, that he would show me a way how I should get a purse every morning that would have five doubloons in it. That he himself could not get it, but that I could. I said to Hauer that I could not get it. Hauer then swore unmercifully that I could; and he told me he must fetch drops from Lebanon. He went on Monday up to Lebanon. When he came back again he said one fort was WIEDERKOMME DROPS, the other I don't know what it was he called it. He had three bottles, one was bigger than the other two, which were but small phials. Hauer said, now we will try something. I said I did not wish to do it, I would rather not. Hauer told me I should try it, he would be bail to me nothing should happen to me. Hauer told me that Shæfer and Bomberger [they were the executors under Peter Shitz's will, and the guardians of young Peter] wanted to bind me out, that they were at his house, and wanted to get me, and told him they would have me dead or alive. He scared me so much that I hid myself; because he said they came every day. I told Hauer he lied. He swore again unmercifully, that he did not.—I then kept myself concealed still. Then Hauer said, we will try to get the purse; and he drank some of the drops; and I drank some of them too. He drank out of the big bottle, which he said were WIEDERKOMME DROPS, I drank of the same. I drank also out of the TWO SMALL PHIALS, but I don't know if Hauer drank any out of them or not. I did not see him do it.—Then Hauer said he would not try that night, he thought it was not worth while.

Some time after this, we went together down to Wolferberger's barn. Solomon Hauer went along with us. John Hauer said, if we would not do as he told us he would give us an unmerciful beating; if we would not tie ourselves up as he told us, he would show us some other things. He then told us that we must tie ourselves up on the loft, with halters round our necks, and fasten the rope to the joist; that then he could tie that one who was to bring the purse in the same way. When I had tied myself, and fastened the rope to the joist, Solomon told me he would hold me; and then he gave me a push down. The rope was round my neck; the end fast to the

joist above. The rope was not long enough to reach to the floor. The rope broke, and I fell down on the threshing floor. The rope was as thick as my little finger, and it was doubled. It had been used for a plow line, and to tie the horse. I did not see the man with the purse. The rope was doubled round my neck. The joist is 11 or 12 feet above the threshing floor. The rope took the skin off my neck, but did not hurt me much. Solomon said he would tie a rope round his neck, but he did not do it. Soon as Solomon pushed me down, he jumped down and ran off. I went home to John Hauer's house. In about 15 minutes after, John Hauer and Solomon Hauer came in together. They said they were very sorry that it happened so that all went wrong. After that Solomon asked me to go towards Bethlehem with him, where he lived. John Hauer told me I should go along with him, that it might not be found out that the skin was off my neck. John Hauer often told me I should tell nothing of it, and I promised him I would not. When I came from Bethlehem I hired myself to my brother Francis, and Hauer again told me not to tell. I then lived with Francis almost a year, till he was murdered.

Patrick Donagan lived at Hauer's. Whenever I went there last Summer, he and Hauer would go out together and whisper something.

CROSSEXAMINED.

I tied the rope round my neck myself; John told me to do so. Solomon never told me to do it. I never asked Rachel Hauer to bring me some WIEDERKOMME DROPS from Bethlehem. I was about 14 days at old Hauer's house, with Solomon, and I went once a shooting with Jonas Hauer, for ducks, down at Bethlehem. I never said to any one that all would have gone right, but Solomon was so curfedly frightened.

I did not ask Jonas Hauer to buy drops for me at Bethlehem.

I never saw Francis Cox before my brother's death.

[See his evidence, and his account of his miraculous escape, on the trial of M^cManus.]

JACOB MEHS, (Sworn.)

I was at Shæfer's town one day. John Hauer told me Peter Shitz was crazy. I said, I never heard any thing like that, and we lived close together. He said, yes, it is true; he has laid in the barn a couple of nights. I said, that can't be, the winter is cold, he would freeze. I said he should take care of him, or tell Shæfer, for fear some misfortune might happen to him. He said, what should I trouble myself with him for? I have had trouble enough already—That is not the worst yet, he said; I wanted to go down to Wolferberger's, and I went past the barn; and when I came to the barn, Peter Shitz was just hanging himself, and I cut the rope, and gave him a clout with my fist, so that the blood spirted from him. He said if I did not believe it, I should go to Wolferberger's barn, and there I would see the blood yet.

GEORGE WOLFERSBERGER, (Sworn.)

Some time last winter was a year, in February, John Hauer came to my house. He told me to take care a little, for, said he, Peter Shitz went down in your old barn; that he is sometimes out of his head. That Peter went down twice, and he thought he would hang himself there. That sometimes he had a pistol in his pocket, and sometimes a rope; and that the second time he went down in the barn, he went after him; and when he came there, he called him twice, but Peter would not give an answer at all. I had a load of clover hay in the upper part of the barn above the threshing floor, for making clover seed. Hauer told me he climbed up, and hunted Peter in the clover hay, and found him there, and pulled him out, and gave him a knock, and he fell down on some sheaf oats I had on one side of the threshing floor; that he jumped after him, and Peter got mad, and wanted to strike him, and he gave him another knock, and Peter fell down in the threshing floor, about four feet from the oats; and if I did not believe it, I might go up, and see the blood on the threshing floor. I went up the next morning, and saw a great heap of blood lying there, and a piece of a rope, about four feet long, lying near the blood, which appeared to be about a GILL or an HALF PINT.—He said Peter would kill himself there. The barn is an old barn, about a quarter of a mile from my house, and not much used,

PHILIP CAPPERY, (Sworn.)

[See his evidence on M'Manus's trial, which he repeated on this trial almost word for word.]

In addition he said :——

M'Manus told me it would not hurt me at all, I was only to sleep in the house along with Cox.——

We were but a few minutes in Cox's house. I had no conversation with Cox that night, I went home with my employer.

The next time I saw Cox, he asked me if I would do WHAT THEY WERE TALKING OF BEFORE.

M'Manus was in the shop after this, getting shoes mended ; Francis Cox was with him once or twice.

As far as I can recollect, Charley was to go out of the house, and I was to sleep there along with Cox.

I have known Cox since May two years, when I sailed with him in the same ship from Derry. I never saw Donagan but once or twice that I knew him from another man.

CROSS EXAMINED.

M'Manus and I were talking QUITE EASY. Cox and Bretz were about a rod before us, talking QUITE LOUD. But whether they were talking loud, or talking at all, when M'Manus and I were talking, I can't recollect. I can't say whether Cox heard our conversation or not.

JACOB GEIGER, (Sworn.)

[See his evidence on M'Manus's trial, which he did not vary from, but related his story in the same manner, and nearly in the same words.]

He added as follows :——

The mare M'Manus had was a little blackish mare. Charles M'Manus

told me he bought the mare at one Bollman's, at Meyer's-town, and gave £.39 15s. for her.

Hauer came to my house, the Sunday before Christmas, with Charles M'Manus. I did not know Hauer then, but I knew him again when I saw him in the bar last Court. Hauer said he would not have come to my house if it was not for Charley. They drank a bowl of hot toddy together.—Hauer said Charles M'Manus was as good company to him as ever was; that he was the best Irishman that ever was. M'Manus said he wanted to ride a piece along the road with that gentleman, meaning Hauer, and they went off together. M'Manus had the little blackish mare; he stayed away about an hour, and came back and stayed at my house all night.

CROSS EXAMINED.

I have got three or four pair of slippers. I only offered slippers to the Jerseymen who had boots; I did not offer slippers to Cox. The two other Jerseymen took their shoes up with them.

After we had done searching, Brown went up to bed as well as Cox; the two Jerseymen staid up with me.

I went up stairs the second time about half after eight o'clock. I don't think Cox had time to have been in a sound sleep: For between the two times of being up I had only time to run round the barn. The first time I went up he was not asleep; he then told me Charley had the belly-ache.

It was about 8 o'clock when Charley left my house. The whiskey was almost out the first time I went up.

I had lent Charley a fiddle on the Saturday of December Court, and he returned the fiddle when he came with Cox; but I had money to the worth of it in my hands.

Charley had no handkerchief round his head when he was in bed; but Cox told me he had given him his handkerchief when he complained of the belly-ache.

MARY GEIGER, (Affirmed.)

See Jacob Geiger's evidence, on M^cManus's trial, which she corroborated in every particular. She also related the same circumstance with respect to Hauer and M^cManus, and their conversation at Geiger's the Sunday before Christmas. In some matters she was a little more minute than her husband, but varied from his story in nothing.—On the night of the murder, she said, that when they had all gone to bed, she had washed up her dishes, and fastened and locked the door, and, having left her husband cleaning the boots, she went into her little chamber to make her bed, but had not been long there till she heard the rattling at the door, mentioned in the former evidence. That at first she thought it was Brown, who lodged in the house, and had been away some place, and was returning home. That there was no latch on her room door, but only a bolt inside, which she had bolted. That when she looked out, instead of Brown, she saw M^cManus at the door.

She further said, that when Cox came so softly down stairs that they could not hear him, till he threw open the door, and told them that M^cManus was down there; that he had thrown some stones upon the roof, and wanted him to let him in. She said COX, SURELY YOU MUST HAVE KNOWN WHERE CHARLEY HAS BEEN. That Cox made no answer, but immediately went to the door and let M^cManus in. That as soon as he opened the door for him, he said, Charley, damn your soul, where have you been all night, keeping us hunting you. But Charley said not a word, but slept on, and went up stairs.

She also said, that Cox did not seem much concerned in the hunting of Charley; he looked but very little, and kept back, and soon hurried into the house before the rest, and went to bed.

MICHAEL KAPP, (Affirmed.)

About two weeks before March Court, Hauer sent for me two or three times, and said he wanted to see me, when I went to him he told me a great many things; he requested me to bring the Judge, before the Court, and he would confess and tell every thing how the business was. But I had certain reasons for not doing it; and I did not inform the Judge of any thing that had passed.

JUDGE GLONINGER, (Affirmed.)

When I attended the President of the Court to take Hauer's confession, the first word he spoke, was to ask if Mr. Kapp had informed the Judge, that he wished him to call upon him that he might confess. He then informed the President that he had sent for him, and wished to make his confession. We took his confession, which he swore to and subscribed; it is the same which has been read to the jury. The next morning, in open Court, he acknowledged all of it to be true.

HENRY SHAEFER, Esq.

(A paper bag with powder produced.) I found this paper and the powder in it, the night Shitz was killed; on the kitchen dresser, at Shitz's house. I was told Donagan had bought some powder at Kapp's; I took it up there to compare it if it was the same. The bag appeared to have been handled, but not much.

GEORGE KAPP, (Affirmed.)

I know Patrick Donagan. The latter end of last October, or beginning of November, Pat. Donagan came to my father's store, and bought half a quarter of a pound of powder. I put it up in a paper bag, the same way I do for every body that buys powder. [a sample of powder shown.] This is a sample of powder out of the same cask from which I sold the powder to Donagan. [The bag found in the house, shown to witness.] This looks like the bag I put up for Donagan; it is the same bigness, both the papers look a like, one like another. There does not seem to be any difference in the powder—the grain of both is alike; it appears to be the same powder. I can see no odds in it. I have no particular manner of putting up my bags: but this kind are cut two off a sheet. I always make them of this shape.

Neither John Hauer, nor Francis Cox, nor Peter or Hugh McDonough nor Elizabeth Hauer purchased any powder of me.

CROSS EXAMINED.

I live half a mile from Shitz's. I cannot swear that I made this bag; I never said I made it, but it looks like the bags I make. I never took

notice how other people make their bags. I get all my paper from Thomas Boyd ; there is sometimes an odds in it. I do not know whether I got all he had of that sort, he sent it to me. If any one else had got powder in one of these bags, I could not undertake to say which Pat. had bought, and which the other had bought. I bought my powder from Martin Dubs, in Philadelphia. I do not know that I bought all he had. I believe other shop-keepers about Lebanon, deal with Dubs also. Rex sells gun-powder.

Squire Shæfer came to me after the murder, with the paper of powder that was found in the house ; I then told him Pat. had bought some from me. I had sold no powder to C. M^cManus ; I think I should have recollected it if I had. I never said it was a man of the name of Peter that bought this powder.

It was about ten days or two weeks after the murder, that Shæfer called with the bag of powder. I can't say with certainty who else bought powder about that time.

JAMES EVANS, (Sworn.)

I know M^cManus and Donagan. They were at my house together last winter was a year. Pat. wanted Charles to join him in quarrying stones. They agreed to work together.——

MELCHOIR RAHM, (Sworn.)

The 9th or 10th of May, in the evening, I was just going to bed. My wife called to me to come out quickly—she thought the prisoners were fighting. I got the key, and went in as soon as I could. When I came into the room, they were all laying down very quietly, except Cox, who sat on a little stool. I asked them what was the matter. One of them answered, nothing. I looked at Cox, and saw a mark of a stroke in his face. I asked him what was the matter. He said, some of these men have struck me, I don't know who they were, it was dark. I asked him what was the difference. He said he did not know whether they were going to murder him, or what they were going to do with him. Patrick Donagan got up, and said, it was me done it. I was laying down asleep here, and Solomon Hauer along side of me, and Cox picked up a bench that was lying here, and throw ed it quite across

us : it hurt me so much I got up and asked who it was ; he said it was Cox, and I gave him a dig aside of his head. Cox said, if I was loose from my chains, I would be afraid of none of you. Patrick Donagan told him he could knock his damned soul out of him. Cox said, IF YOU HAD AN AXE, YOU COULD DO IT BETTER PROBABLY, IT IS NOT THE FIRST ONE YOU HAVE KNOCKED OUT. Donagan got angry, and jumped up, caught Cox by the hair, and pulled him down. They would not quit—I parted them, and sent for the blacksmith. Cox said he would send for the Judges in the morning, and DISCOVER ALL THE SECRETS, LET BECOME OF ME WHAT WILL. Donagan said he might discover all he had against him that was the truth, he had nothing against it ; he should either discover what secrets he had, or fight it out with him : That if Cox would not discover the secrets, and I would let them loose, and fight it out, he would give me 10 dollars. When I took Cox up stairs, he told me again, that he would send for the Judges in the morning, and discover all the secrets.

Pretty soon after they came to gaol, I heard Hauer tell M^cManus to keep good spirits ; not to tell any thing and he would be saved, and he hoped he would be saved too ; and if he wanted any money, he would make him up £.100 or £.200 towards his expences to get him out of prison.

The next morning after the dispute, I told Donagan what Cox had said up stairs ; he said he didn't care if he did send for the Judges so he told the truth.

Afterwards Cox allowed that he was wrong and had spoke too much, and they made it up again, and I took Cox back again to them. They appeared to be intoxicated that night.

The testimony being closed on the part of the Commonwealth,

Mr. HOPKINS, for the defendants, Donagan & Cox, shortly opened their defence. He stated, that they meant only to defend those two prisoners ; they were not concerned for Hauer. That they had a right to expect an impartial consideration of their case. That great difficulties were imposed upon the prisoners ; that prejudices and misrepresentations had gone abroad

against them ; they are apt to lay hold of the minds of men ; but the jury ought to divest themselves of all prejudices : they have solemnly appealed to their God, to try them according to the evidence. That the evidence on the part of the prosecution was inconclusive and unsatisfactory, and not sufficient to destroy the life of a sparrow, much less that of a man ; the whole of it is merely presumptive—there is no direct evidence. We mean to prove, he added, that these men have uniformly supported an industrious, fair and reputable character, respected by all with whom they had any intercourse. And that when this murder was committed, Donagan was at a reputable house, 10 or 12 miles from the scene.

GEORGE ILLIG (Affirmed.)

I have known Patrick Donagan about two years. I cannot say any harm of him ; he behaved well as long as he worked with me. He worked with me six or seven weeks, or two months, last Summer. He worked thro' the neighborhood. I heard no ill character of him. He was very industrious, and had earned money with me. He deposited near £200 with me, to keep for him. He came to my house the night of the murder. I was not at home when he came ; I was at Shæfer's town, 8 miles off. I do not know any thing else but that he was at my house all night. I saw him go to bed : Our usual bed time is about 9 o'clock. When I got up in the morning, I saw him come in the same door he went out of the evening before. We had to settle for quarrying stone ; he said he came on that account. He asked me if I was going to Philadelphia soon, he wanted to send a letter. So I gave him pen, ink and paper, and he wrote a letter that morning. While he was writing, one Nipe, from Shæfer's town, came for him—said he was sent for him. The man called me out, and told me what had happened at Shitz's house. The man told me they suspected Pat. was concerned in the murder ; and asked me if he staid all night. I said, yes. He then went in, and told him what he came for. Pat. said, my God, can it be true, or some such words—and he DESIRED ME to give him a few lines to Squire Shæfer, that he was all night in my house. I told him I would go up myself, I was anxious to see how that misfortune happened. I told Squire Shæfer, I was most sure he staid all night in my house that night. They thought he was clear of it and let him go.

He did not seem unwilling to go. I could not see that he altered his countenance; nor did he run off after he was discharged. He was in the neighborhood for some weeks before he was apprehended again.

CROSS EXAMINED.

He had often slept at my house before. He said he slept with my son that night. There were other beds empty in the room. His home was at Hauer's immediately previous to this.

WENDLE HYPsMAN, (Sworn.)

I do not know much of Donagan or Cox. Donagan worked in the neighborhood about three years ago. He was an industrious sober man, and bore a good character through the neighborhood for what I know.

Cox had a good character in my neighborhood three or four years ago. He went to Ireland, and came back again. I never heard any thing against him till this.

Jacob Keller, Leonard Illig, James Douglas and Philip Caffery were likewise called to speak of their characters, which they did much in the same terms as George Illig and Hypsman. The prisoners called no other witnesses.

MEMORANDUM.

When John Hauer was brought to the bar and told to hold up his hand, he did hold up his hand; and from his whole appearance, and from a variety of circumstances, there was no room to doubt, but that he stood MUTE through obstinacy. He had previously enquired, if one who was crazy could be hanged. It evidently appeared that he wished to be thought in a state of lunacy or derangement; but he did not affect it with a sufficient degree of art; nor was there the least appearance of derangement in his eye. He kept himself in a filthy situation; would speak to no one; and when any person would go near him, he would bite at them, and if he could reach them, he would abuse them greatly. When brought to the bar, his appearance was very disgusting. But no suggestion was made to the Court by his counsel, or others, that he was NON COMPOS: If there had been any such suggestion, the Court would have impanelled a jury to enquire whe-

ther he stood obstinately mute, or whether he was dumb *ex visitatione Dei*. But as standing mute is not now so penal as formerly; and as in such case the Court are directed to enter the plea of NOT GUILTY, by act of assembly, they did not consider themselves as bound *ex officio* to impanel such a jury; and it was not prayed for by his counsel, who had actually pleaded in his behalf the plea which the Court overruled.

When the evidence was all closed, Mr. DUNCAN addressed the Court to the following effect. Messrs. ELDER, LAIRD, FISHER and CLYMER gave the same reasons to the Court for their conduct to John Hauer, when Mr. Duncan had finished. These five gentlemen were of Counsel for John Hauer.

The Counsel for the prisoner, John Hauer, before the Counsel for Patrick Donagan and Francis Cox, proceed with their defence, beg leave to state to the Court, that on this, as well as on the former trial, they have endeavored to discharge their duty towards him faithfully, to the extent of their slender abilities. They believe that if John Hauer, on the former trial, had not thought proper to take his case out of their hands, probably he would not now have been in confinement. But as John Hauer sent for the Judges, and confessed his concern in the very foul and barbarous murder committed on his brother-in-law Francis Shitz, and having, when brought to the bar the next morning, publicly pronounced the truth of that confession, and persisted in it; and as John Hauer during the proceedings, and upon his arraignment, upon the present indictment, has remained mute; whether obstinately, or by the visitation of God, they pretend not to say; and further, has declined all intercourse with his counsel; having attended the trial, and examined the witnesses; they therefore, consider it their duty to be silent, and now deliver up John Hauer to the Court and to the Jury; well satisfied that the Court will consider and give weight to any favorable circumstance that may exist in his case. They are induced to this measure from a sense of its propriety, from a respect to the Court, and a regard to their own characters. They would, however, have it understood, that they have not been awed into it, by the dread of popular resentment and fury, which may have been excited against them for the part which they have taken in defence of John Hauer; this they most heartily despise. For though HE STOOD AT THE BAR COVERED OVER WITH THE BLOOD OF HIS BROTHER,

it would have been their duty to have become his counsel ; and having once undertaken his defence, not to have defended him with their best exertions, would have been a violation of their oaths, a base desertion of a man who had put his life in their hands, and have rendered them unworthy members of a very honorable profession.

Mr. ELDER addressed the jury on behalf of the two other prisoners ; and Mr. CLYMER followed him, but did not finish his speech ; as one of the jurors had taken ill, and declared he could not set it out all night. Every body was excessively fatigued ; the Court therefore adjourned at 12 o'clock at night, till 8 the next morning. Four bailiffs were sworn, as before, to keep the jury together.

For the sake of brevity, the summing up will be given as one speech on each side, and all the observations will be blended together.

Mr. CLYMER for the prisoners, DONAGAN & COX.

GENTLEMEN OF THE JURY,

Although a very atrocious murder has been committed, yet I trust the jury will not be so far incensed against the enormity of the crime, as to disable them from judging calmly and deliberately upon the case of the prisoners. In the present case I apprehend there is no evidence to satisfy a wary mind of their guilt. To convict, the evidence ought to be certain and strong ; it should be so manifest that it cannot be contradicted. There is no positive evidence against Donagan and Cox ; it is altogether circumstantial and presumptive. To convict of murder the presumptions ought to be violent, nearly amounting to full proof ; like the common instance put in the books, of a man found suddenly dead in the room, and another be found running out in haste with a bloody sword in his hand. But light or rash presumptions, says Lord Chief Baron Gilbert, weigh nothing. *Gilb. Ev.* 157—8. 2. *Bac.* 311. And in 2 *Hale* 289. That humane judge, speaking of presumptive evidence, says that it must be very warily pressed, for it is better five guilty persons should escape unpunished, than one innocent person should die ; which is also said in 4 *Black.* 358. Lord Hale not only speaks thus, but he gives us some remarkable instances to show the danger of relying on such evidence, and how easily the mind may be misled by a variety of cir-

cumstances, seemingly tending to establish a fact, but which has afterwards been found never to have happened. I will read you these cases, Gentlemen, in order to put you upon your guard against too easy a belief of such evidence as exists in the present case ; you have consciences to satisfy, and I am persuaded you will not give a verdict which, when you come to reflect upon it afterwards, will rankle in your minds to the latest period of your lives. You will therefore, Gentlemen, require strong evidence before you will venture to take away the lives of the prisoners, you, I am sure, will not convict upon conjecture ; or where there is even a reasonable ground to doubt. These men may be guilty ; that is a matter with their consciences ; it does not appear so, I apprehend, from the evidence. It is much safer therefore to acquit them. If they should escape undeservedly, they still have their account to settle with their God. They may go hence, and hereafter lead the lives of good citizens ; and by their good conduct atone for their former offences. The thief upon the cross was pardoned at the last hour. I however, declare, that if I believed them to be guilty, I would not rise in their defence.

“ If, says Lord Hale, a horse be stolen from A. and the same day B. be found upon him, it is a strong presumption that B. stole him ; yet I do remember before a very learned and wary judge, in such an instance, B. was condemned and executed at Oxford assizes ; and yet, within two assizes after, C. being apprehended for another robbery and convicted, upon his judgment and execution confessed he was the man that stole the horse, and being closely pursued desired B. a stranger, to walk his horse for him, while he turned aside upon a necessary occasion and escaped : and B. was apprehended with the horse and died innocently.”

“ I would never,” he adds, pa. 290. “ convict any person of murder or manslaughter, unless the fact were proved to be done, or at least the body found dead, for the sake of two cases—one was thus : An uncle, who had the bringing up of his niece, to whom he was heir at law, correcting her for some offence, she was heard to say, *GOOD UNCLE DO NOT KILL ME* ; after which time the child could not be found, whereupon the uncle was committed upon suspicion of murder, and admonished by the justices of assize to find out the child by the next assizes, against which time he could not find her, but brought another child as like her in person and years as he

could find, and apparelled her like the true child, but on examination she was found not to be the true child; upon these presumptions he was found guilty and executed. But the truth was, the child being beaten ran away, and was received by a stranger, and afterwards when she came of age to have her land, came and demanded it, and was directly proved to be the true child." Now, gentlemen, upon presumptions as strong as those, one would scarcely hesitate to convict; yet we find how fallacious they were. By trusting them, you may sometimes punish the guilty; but too frequently you may destroy the innocent. We do not pretend to say, that in every instance presumptions are to be avoided; but we desire to put you on your guard against too easy an attention to them. Let not the magnitude of the crime so far rouse your indignation, as to induce you to listen to circumstances like the present, and by the aid of prejudice, which may steal upon you without your knowing it, unless you firmly resolve to resist it, and consider the case as if you had never heard of it before, give a weight to the evidence which it does not deserve.

The instances which have already happened ought to alarm you, lest induced by specious appearances, but which are yet entirely deceptive, you too, may bring innocent men to an unmerited end. It is true where the fact intended to be proved is so irresistibly the consequence of the circumstances, that it could have happened upon no other principle, the human mind is bound to assent to its truth; but if it may or may not follow from such circumstances, it then becomes a matter of doubt and uncertainty, and we are equally bound to resist it. The other case, gentlemen is thus stated by the same great authority. "Another case happened in my remembrance in Staffordshire, where A was long missing, and upon strong presumptions B was supposed to have murdered him, and to have consumed him to ashes in an oven, that he should not be found; whereupon B. was indicted of murder and convicted and executed, and within one year after, A. returned, being indeed sent beyond sea by B. against his will; and so, tho' B. justly deserved death, yet he was really not guilty of that offence, for which he suffered."—We lay these authorities before you for your consideration, and we have no doubt, gentlemen but that they will have the effect with you which they ought to have.—So, in 8. Mod. 249. Gilbert Chief Baron declares, that a man shall not be found guilty, and hanged upon presumption.

In the case of the King against Mason, on an indictment for maliciously and piratically burning a ship, it was proved that the defendant, who was master of the ship, tampered with the carpenter to knock her on the head; that on the day the ship was burnt, he made all the crew drunk, and then ordered a fire to be made in the cabin, where there had been none for a month before that time, and the defendant and most of the crew then went on shore, except two, who were very drunk; that there was but one bucket belonging to the ship, which the defendant had ordered a sailor to fling overboard the day before the ship was burnt—Upon this evidence, says the book, the presumption was very strong, that the ship was burnt by that fire which was first made in the cabin; but this being only presumption, and no direct proof, the defendant was acquitted. 8. Mod. 74. And in the same book, pa. 66, we find the case of the King against Sprigg and Oakley thus reported: “The defendants were tried at the Old Bailey upon an indictment for PIRACY, in sinking a ship near the Isle of Man.—The evidence was thus: Sprigg bought this ship, and made the other defendant, Oakley, master thereof; and having freighted her, he insured £.500 on the ship, and £.400 on the cargo, to the West-Indies. Afterwards they put to sea, and run the goods upon the coast of England. They put to sea again; and about two days afterwards the ship was sunk; and then he protested at the next port, that both the ship and the cargo were lost.

The proof against the master was, that the day before this ship was lost, he took notice that the ship's boat was out of repair, and desired some of the men to stop the chinks therein, for that he did not know how soon they might have occasion to make use thereof: that the next day he desired one of the sailors to see how deep the water in the pump was, who in a quarter of an hour before had pumped till it was no more than two inches deep; but now, to his great surprize, found it seven inches deep; thereupon he, and the rest of the ship's crew began, and continued to pump, but still the water became higher in the ship, and within half an hour was fifteen inches high: that thereupon the sailor who first pumped, and some of the rest of the ship's crew, offered to go down into the hold, but the master would not suffer any of them to go down, nor any body to be there besides himself and Sprigg, who was all the time below, which was proved by the sailors; and that the water could not flow in so fast, unless the ship was bored, or broken in the bottom.

The proof against Sprigg, the owner, was, that a day before the ship put to sea he bought an auger which was an inch and an half wide in the bore ; that the ship had augers enough before, and that there was no manner of occasion for so wide an auger ; and that he was under the deck all the time the sailors were pumping, and, as they believed, boring the ship.

“But THE EVIDENCE BEING ONLY PRESUMPTIVE against both the defendants, they were acquitted.”—

Gentlemen, I have cited these cases to show you, how little regard is paid to evidence of this kind in capital cases ; and that the lives of men are not to be sported with upon mere presumptions ; and altho’ the evidence in those cases were sufficient to satisfy almost any mind, yet being in the case of life, with an humane and wise caution, it was thought proper to acquit the defendants. Thus you see, gentlemen, what the rule is, and ought to be in those cases ; and if you should even err in acquitting the prisoners, it is told to us, that it is safer and better to err on the side of mercy, than on the side of justice ; it is safer to err in acquitting than in punishing. 2. Hale. 290. Weigh well, therefore, every thing you have heard ; and if you shall find the evidence such as we shall endeavour to show it to be, uncertain, unsatisfactory, inconclusive, let your judgments discard it upon this awful occasion ; for you, gentlemen, are bound to take notice of the rules of evidence, as well as of the evidence itself ; and if you apply those rules to the evidence before you, we can be under no apprehensions for the fate of our clients.

Innocence, gentlemen, is as bold as a lion. Conscious of their innocence, the two prisoners dread not the severest investigation ; but rest with confidence that they will be restored to their liberty by the verdict of a conscientious and impartial jury.

Now, gentlemen, let me consider the effect of the evidence as it is detailed against Patrick Donagan. The WIEDERKOMME DROPS seem to be an important link in the chain. I will shortly observe upon that, as well as his intimacy and connection with Hauer, and all the other circumstances which have been brought to your view.

I expected to have had it shown, from the opening, that the **WIEDER-KOMME DROPS** were a deadly poison ; but no such thing has been attempted, nor any account given of what they are, or how they are composed : on the other hand, we find both Hauer and Peter Shitz drinking of them, and that no ill consequence ever followed from it. But it is not hard to conjecture what was the object of them ; it has been the fashion of late to desire to grow rich by the aid of spirits, and these unknown drops were to operate as a charm or spell to conjure up some ghost, and to unlock the wealth that is secretly buried in the earth. We have had of late several instances of this ; and designing and artful men, for the purposes of gain to themselves, have had the address to induce a strong belief of this power, and to impose upon many credulous men. Patrick Donagan himself, though he does not want understanding, appears to have been under this influence. Why else would he take such pains to procure drops, unless he supposed they possessed some peculiar power, and were famous for raising ghosts ? The very difficulty in procuring them, must have strengthened the opinion, and the apparent reluctance to part with them for large sums, must naturally have increased his belief, as well as his anxiety to possess such a treasure. It never could be for the purpose of poison. He would not be such a fool as to offer such a price as £.50 for a gill, for the mere purpose of poisoning ; when for sixpence he might have procured as much **ARSENIC** as would have destroyed half a dozen lives. Besides, gentlemen, he would have been more apprehensive of a discovery, and more cautious in his enquiries, if he had intended any harm. He never would have been so public in his search for it, and have thus opened the door for evidence against him, in case mischief had followed. He affects no secrecy, lays no injunctions upon any of the doctors. Dr. Stauff himself seems to have no conjecture that any thing improper was intended ; he even jokes upon the subject, and tells Patrick that he supposed he wanted to try projects with these drops—that Patrick smiled, probably at the shrewdness of the conjecture, and said, yes.—Gentlemen, we never find Donagan affecting the least secrecy in his searches after these drops. When he went to Dr. Koenigmacher he went in company with Tammany, who is proved to you to be a man of reputation. Nor is it greatly to be wondered at, gentlemen, that Patrick Donagan should be impressed with an opinion of the power of this medicine to raise up spirits ; he had heard it, probably, much talked of, and he was anxious to try the experiments.

We read of very great men who have been under the same delusion, if it is a delusion; and even Sir Mathew Hale and Dr. Johnston firmly believed in the existence of witches and witchcraft.—There may be something in the temper and disposition of some men, which may render them more peculiarly liable to such impressions than others.—Be this as it may, it seems to us that this kind of evidence is too frivolous to be relied upon to affect the lives of the prisoners upon so serious a charge as the present. I will examine whether the other circumstances are entitled to more weight.—

Gentlemen, is it any proof of a conspiracy that Donagan lived in the house of Hauer? Must a man necessarily share the guilt of the person in whose house he lives? or is he liable to the misconduct of his landlord? How can he, upon any principle of reason, be presumed to have a knowledge of all his plots and conspiracies, all his wicked intentions, from the mere circumstance of his living in his house, without other proof? Think how dangerous a doctrine this would be! Patrick Donagan is a single man; he must have his home somewhere. But if it should unfortunately turn out that his landlord has been guilty of murder, he must also share the guilt of his landlord, and be liable to all the disgraceful consequences from the mere circumstance of his living under the same roof. This is too absurd to reason upon. But he has been seen to ride backwards and forwards with John Hauer. Is there any thing very extraordinary in this? on the other hand, is there any thing more common than that an inmate should associate with his landlord? will this admit of any conclusion to affect the innocence of Donagan? if it will, it will be dangerous ever to have been seen in company with a man, who, as it may afterwards appear, is an abandoned villain. But, gentlemen, from such premises, no conclusion will follow.—

But the purchase of the powder is next resorted to, as a circumstance of mighty weight in the case of Patrick Donagan. We, on our part, can conceive nothing more frivolous and inconclusive. It was not until two weeks after the murder that this was ever thought of at all. It is now brought in, with a view that many little circumstances taken together, trivial and insignificant in themselves, should appear to form a great mass of proof. But we may easily perceive, that even all those little circumstances actually stand separate and unconnected with each other, proving nothing; carrying

no conviction to the mind.—Because Mr. Kapp makes bags of paper resembling the one produced to you, though he cannot expressly swear that either the paper or the powder is the same which he made and sold, you are to suppose it to be the same, and to presume that no other man can fold an half sheet of paper in the same shape. Because he procures his paper all from one manufacturer; admitting it to be the same sort, you are to presume no other storekeeper procures paper from the same man. Because he purchases powder from Dubs and Marquendaunt, and the grains of that in the papers shown have a resemblance, you are to suppose he purchased it of Kapp, though even Mr. Kapp admits that storekeepers about Lebanon also purchase powder from Dubs and Marquendaunt. Because Patrick Donagan, who was accustomed to quarry stones, purchased a small quantity of powder two months before the murder, which he might have wanted, and have used for the purpose of a blast, you are to suppose this bag to be the same, and this powder the same, and that no one else could have purchased such a paper of powder either of Kapp or any other storekeeper. I say, you must of force raise all these hard presumptions, or the whole argument built upon this poor circumstance, on the part of the Commonwealth, must fall to the ground. For if you do not at once presume the whole of them, then it becomes the most inconclusive, uncertain and unsatisfactory proof in nature.

Of a piece with the affair of the powder, is the circumstance of his being at the house of Logan, when M^cManus was there with the pistols. What does this prove? what use can be made of it? If you apply it at all, the argument will prove too much. What was his conduct there? He was peaceable; he did not assist M^cManus in his opposition; nor did he appear to have any thing to do with him. After the opposition had rested, and M^cManus was convinced that Miller was not then acting as a constable, they became friends again; they drank together. Miller has told us, that he had been in company with M^cManus before, at a tavern, drinking, but he thought no harm of it. But if this is evidence of a conspiracy, or a participation in the guilt of M^cManus, why not also indict Miller and Logan? They are equally involved in this kind of guilt. In short, gentlemen, such a number of strange, trifling and incoherent circumstances never before were collected together to support a charge of this magnitude, and of such serious conse-

quence. I am convinced you must dismiss them all from your minds, as undeserving of that attention and weight that is endeavoured to be given to them.

It is further attempted to raise a suspicion from the circumstance of his going to George Illig's. Had he been at Hauer's they would have made it a plea to hang him. They would still hang him though he was ten miles off on the fatal night.—This is reducing poor Patrick to a miserable dilemma. Let him be where he would, he must not escape.—We, gentlemen, consider this as a striking circumstance in his favour. He appears to have had no connection with the perpetrators of this murder; nor to have known any thing of the dreadful scene that was at that moment about to be acted. He was at a distance from the place; at the house of a reputable independent man, who is here, and has testified in his favour. He staid there all night. It was not a trifling excuse that carried him there. He had an account to settle with Mr. Illig, for quarrying stone; he had also money deposited in his hands, to a considerable amount. He had often slept there before; he was well known, and well thought of in the neighbourhood.—In the morning he appeared as unconcerned as usual; no marks of a disturbed and guilty mind. He accordingly sat down and was writing a letter to Ireland, when the messenger came for him. So sudden a summons upon so awful an occasion, would naturally strike an immediate alarm; my God, said Patrick, can it be possible?—He did not hesitate to obey the summons. He was not unwilling to undergo the strictest examination. He asked Mr. Illig for a few lines to certify that he was at his house all night. So persuaded was Mr. Illig of his innocence, that he went up with him to Shæfer's-town, where he was immediately discharged. In all this we cannot discover a single TRAIT of guilt.—

The conversation in the gaol is the last circumstance brought against him. Certainly what Cox declared can be no evidence against Donagan, for Donagan expressly denies his knowledge of any secrets, and put him to his defiance to disclose it. He was indifferent to any thing he could say, if he only adhered to the truth. If then this could possibly have any operation, it can have an operation only against Cox himself. But they appear to have been hasty expressions, in the heat of liquor, without any meaning. We cannot,

however, conjecture what they referred to. It is more than probable, that if Cox had any knowledge of criminal matters to affect Donagan, in the heat of his rage, he would have given it vent. Be that as it may ; it certainly can have no relation to the matter now before the Court. For you will observe, gentlemen, that Cox charges him with knocking souls out with axes ; it could not therefore be the secret of this murder. Donagan is not charged as a principal in the murder. It is not pretended that he was present in the house of Francis Shitz, or that he was one of those who struck Francis on the head with the axe. On the contrary it is evident he was not there. Whatever this may have meant, therefore, you must dismiss the circumstance from your minds, as affecting the present case, both as to Donagan and Cox. Gentlemen, there is a strong mark of the innocence of Patrick Donagan : When he was discharged from the first examination at Shæfer's town, he still continued in the neighborhood. He was taken up a second time and discharged. He still remained, resting upon the consciousness of his innocence. It was not till three weeks after the murder that he was committed to prison. Had he been guilty, he had ample time to make his escape ; and his flight would have been a strong presumption of his guilt. But he was not afraid to submit to a trial by the laws of this country ; well knowing that no evidence of guilt could ever be brought to affect the good character he has hitherto supported. He is now upon that trial, waiting with awful anxiety for the verdict you shall deliver.

Let us now consider, gentlemen, whether the evidence against Cox is intitled to more weight than that against Donagan. There is not one witness who can say that he ever saw him in the neighborhood, or near the house of Francis Shitz ; or that he had ever been in company with, or had any knowledge of John Hauer : they were utter strangers to each other. The whole strength of the evidence against him is founded on the conversation at Manheim. No circumstance appears from that to induce a belief that he was privy to what was passing respecting the murder of Shitz. Nothing, from any thing that appears, was disclosed to Cox at Manheim. Cox himself was deceived, and M'Manus played this trick upon him. We find from the evidence of Caffry, that M'Manus would not tell what object he had in view, only that he should receive no harm. And when Caffry asked Cox the next day, Cox declared he did not know what it was M'Manus

wanted with them. It is too strong a conjecture, then, to suppose that Cox was at all acquainted with the detestable plan of M^cManus. There is no ground even for a probable presumption; and in the case of life, it ought to be violent. We shall see by and by, whether any part of his conduct at Geiger's, demonstrates that he knew any thing of the intention of Charles M^cManus. From the testimony of Caffry, it was impossible that Cox could have heard the conversation between Caffry and M^cManus. He was walking before, a considerable distance, with Bretz, in a loud conversation, while M^cManus and Caffry were walking behind, and talking extremely low; it was a matter between Caffry and M^cManus, with which Cox had no connection. But his going to the house of Geiger, on the night of the murder, is looked upon as a circumstance of great moment. We apprehend there is the same uncertainty in that as in all the other circumstances. From his conduct at the house nothing can be gathered which ought, with reasonable men, to induce a conviction. The going to bed a little before 8 o'clock, proves nothing; neither is it, especially after the fatigues of travelling, an unusual hour. How can we fairly judge that Cox knew any thing of M^cManus's designs, from any thing that took place? On the other hand, is it not more reasonable to suppose, from a fair construction of the evidence, that he did not know any thing of it? As to his refusal to hunt for him; that may be well accounted for from what you have heard;—he may, and actually must have supposed that he had gone after the girls, and that it would answer no purpose to search for him. This accounts for his indifference. He had no idea that he was frozen to death, or in the least danger from the cold. If, gentlemen, there had been a formed design, how easy would it have been to have slipped M^cManus out of the chamber window, and not let him go down stairs with a probability of his being discovered, when the design in such case would have been to keep his departure from the house, in the night, an entire secret. Neither would Cox have been so unguarded, if he had known what M^cManus had been about, as to have let him into the house in the presence and hearing of the Geigers.

Gentlemen, many parts of the evidence might be treated with deserved ridicule, but the solemnity of this day, (for the necessity of the case has obliged us to break in upon the Sabbath) forbids my having recourse to any kind of argument that would have the appearance of levity. I would not wish to treat you with so much disrespect.

I have endeavored to do my duty to my clients; I conceive them to be innocent of this charge. They have hitherto supported good characters among all who have known them since they came into this country; this you have from the most unexceptionable quarters. If the presumptions were much stronger than they are, and yet liable to doubt, this good character would be entitled to have great weight;—but as the evidence in this case is, it is entitled to a conclusive influence.

If I have omitted any thing that might be said for the prisoners, I am sure that omission will be ably supplied by the gentleman who is to follow me on their behalf. I am confident you cannot have much hesitation as to the verdict you shall give—I have no doubt, gentlemen, but when you return to this bar, you will pronounce my clients not guilty—If, gentlemen, you should convict them, and it should turn out hereafter, that they were innocent, you plant a thorn in your breasts you will never be able to eradicate.

MR. HOPKINS, for Donagan & Cox.
GENTLEMEN OF THE JURY,
 Though as Counsel for Patrick Donagan and Francis Cox, we admit, that, in the investigation of this cause, you have heard “a tale, the lightest word of which, (in the borrowed language of Mr. Hall, in his opening) must harrow up your souls, freeze every particle of your blood, make your knotted and combined locks to part, and each particular hair to stand on end, like quills upon the fretful porcupine,” yet your duty is justice and not vengeance: though we admit, that this crime is as red as crimson, yet it is neither in your power, nor, if it were, is it your duty to make it as white as snow: though we deplore, as much as any of you, the bloody and inhuman massacre which put a period to the innocent and unspotted life of Francis Shitz, yet my colleagues and myself enter our solemn protest, before God and the world, against your expiating one murder by the commission of another. For we hold it to be a self-evident proposition, founded in reason, and in a peculiar manner enforced and consecrated by our laws, which makes it the principle of your oath of office, to try according to your evidence: that to convict these men of the offence with which they stand charged on any other ground than the evidence you have had laid before you here on oath, would, in the sight of God and man, be nothing short of judicial murder,

aggravated and blackened by the crime and sin of wilful and corrupt perjury. In holding a language of this sort to the present jury, who are, and we rejoice in the assurance of it, in the emphatic language of the law, superior to every exception; we entertain no apprehensions, that with them we will be liable to the imputation of treating them with disrespect, or of insinuating a doubt of their discharging their present important duty with all that impartiality and cool solemnity which dignifies public justice. The cause of it, the emphatic, the alarming cause, which makes it our duty to declare it with all our powers, and your duty to hear it with your best attention, is the calumny which the busy babbling tongue of lying rumour has created and given to "the bandy wind which hisses all it meets," to carry, not only into the streets and along the highways, but into every house and corner, nay into the very ears of every man in the county of Dauphine. Men, feeling as they ought at the repetition of such an unprovoked and horrid murder, and judging from those impressions made by the most prejudiced, the most exaggerated, the most inhuman, and the most unfounded stories, have long since prejudged this business; and the bloody decree has by the public voice gone forth, consigning every one whose name has been mentioned as any way suspected, to the most ignominious death. The cells and dungeons in which the bodies of these unhappy men have been long incarcerated, have been assailed by it, and the continual and torturing whisper of every gale has repeated to them this ruthless and savage sentence.

To us, then, who are delegated by them to make known to you, who are to pass upon their lives and deaths, their situation—their feelings—the grounds upon which they rely for that "good deliverance" which the humanity of the laws enjoins shall be solemnly supplicated for them from the Great Author of existence, it is a primary duty we owe to them, which we owe to you, which we owe to ourselves, to endeavor to dispel this mist of public illusion; which represents every thing connected with their fate, as most portentous to evil.

We, therefore, call upon you, as men possessed of that native and gentle spirit which humanity inspires; as men desirous of preserving that fair character and honest reputation which renders life happy; as men jealous of your country's honor and purity in the administration of its justice to persons who are aliens to your constitution and laws, and strangers destitute of the

sympathy of relations and friends in this perilous hour; as men charged, in the proud and enviable character of citizens, with the inflexible integrity, and due administration of the laws of your country—as jurors, whose minds, the law declares, should be as white paper, clear from every impression but those produced by the progress of the business in Court, and whose most solemn duty it is, in the language of your oaths, well and truly to try and true deliverance to make between the Commonwealth and the prisoners you have in charge, and a true verdict to give according to your evidence, to suppress every feeling which public prejudice may have excited, to discard every sentiment you may have formed before you entered this temple of justice, and to try the prisoners, who stand before God and you, on their deliverance for their lives or deaths, according to your evidence. On the part of the prisoners, altho' we ask no favours, we conceive it to be our business to remind you of what will be very grateful to your feelings in discharging that duty which is imposed on you of directing and governing this “strife of storms,” this earthquake of human passions, that the law enjoins, what your humanity would dictate to you, to administer justice in mercy. These men stand charged with counselling, procuring and abetting the murder of Francis Shitz. The charge itself implies, the indictment expressly charges and pledges the prosecutors to prove, in order to support the accusation against them, that they had a perfect knowledge of the designs of those who committed the murder; that they concurred in them, and wilfully contributed their aid and assistance in carrying them into effect. This knowledge, then, is the *GIT* of the present business—It is the essence of the charge. Actions in themselves injurious, unless accompanied with evil intentions in the person committing them, induce no guilt, constitute no offence. The death-doing strokes of the maniac, and the writhing torture inflicted by the fool, fall harmless at their feet. The thousand shocks which flesh is heir to, though they wring the heart, and suffuse the eye of humanity, yet where they result from misfortune or chance, ignorance or mistake, in the prosecution of that which is not unlawful, they draw after them no crime. If, therefore, in the discussion of this cause, you should be of opinion, that any of the actions of either of these men, were either intimately or remotely implicated in this transaction; if you should think them not so intended, and that their wills did not concur; or unless you are fully satisfied that they were so intended, and that their wills did concur, it is your bounden duty to refuse

them any influence in this cause. Before I proceed to a particular investigation of the testimony adduced in support of the charge, permit me to make a few observations tending to show what sort of evidence (where the fact itself is not proved) the law requires to establish the charge of wilful and deliberate murder. It must be admitted, that the testimony is presumptive only. The question is, what sort of character that presumptive evidence must have, which the law looks upon to be sufficient to establish the commission of a capital crime. On behalf of the prisoners, I contend it must be violent, and such as necessarily concludes to the establishment of the fact at the same time that it excludes all and every other way of accounting for it. Probable presumptions, although allowed a degree of weight in the scale of evidence, when applied to the investigation of the civil concerns of men, is never permitted to influence the beam, even the dust of the balance, when the great and all-important question of life and death is suspended in the scales. Every thing which is subject to doubt and conjecture sinks out of sight. Nay, every thing which is plausible and even probable in this solemn enquiry, becomes lighter than air, and "leaves not a trace behind." A violent presumption is defined to be where circumstances are proved that do necessarily attend the commission of the fact charged, G. L. E. 160. Loft's Ed. of Gibb. 309. 2 Bac. abr. 311. Nothing furnishes a violent presumption of a fact, which leaves it open to be accounted for in any other way. The crime is the substance; circumstances which amount to proof of the commission of it must be its shadow. In short, gentlemen of the jury, in the language of Lord Coke, "the evidence to convict a prisoner (of a capital crime) should be so manifest, that it cannot be contradicted." 3 Inst. 137. Life being the immediate gift of God to man, to deprive him of it by human institutions, requires the most indisputable evidence of his having forfeited it. Relying with confidence on this principle, as the touchstone furnished by reason as well as by law, by which conscientious jurymen ought and will try the evidence of guilt laid before them on a charge so all-important to the prisoners in the bar, I ask your indulgence while I lay before you those observations which occur to me on the testimony; in which I hope to make it appear, that the testimony relied upon does not afford violent and manifest evidence of guilt; that on a fair construction, it does not even furnish any degree of probability of the prisoners being concerned; but on the contrary, loses itself in doubt, conjecture and uncertainty. As the evidence against the two prisoners is

essentially different, it becomes a matter of necessity, to consider their cases separately, as far as the testimony divides itself. My colleagues having first considered the case of Patrick Donagan, I shall take the liberty of first asking your attention to the charge against Francis Cox. The evidence of his guilt is alleged to arise out of his conduct at Manheim—at the house of Geiger, and in prison. The jury will readily perceive the difficulty the counsel for the prisoners are subjected to in the present discussion, as the gentlemen concerned for the prosecution have declined (though recommended to them by the court) to speak alternately; by which the huge mass of proof is thrown before us without arrangement, comment or application. This awkward situation will, I hope, in some degree, furnish an apology for the want of that order and pertinency which I fear will appear so visible in the observations it falls to me to make. I will first endeavor to show that there is no evidence, much less manifest evidence, to prove that Cox heard and understood what passed between M^cManus and Caffry, and of course that he was not privy to M^cManus's designs; and secondly, supposing, tho' not admitting, that if he did hear and understand every word of it, though it might furnish grounds for doubt and conjecture, yet it would not amount to the proof required by law to convict the prisoner. The circumstances which will probably be relied on as disclosed at Manheim, as evincing Francis Cox's knowledge of M^cManus's proposal and designs, are, that they were acquainted—that Cox first applied to Caffry—that he probably heard it when made to Caffry—and that Cox a day or two after asked Caffry if he would do what they or we (the witnesses don't recollect which expression) were talking about before. That Cox was acquainted with M^cManus, as men in their situation in life, who live in the same neighborhood, and particularly in small villages, such as Manheim is; can be no ground of surprise or apprehension. But its intended weight in the present inquiry, must be by way of introduction, to give a sort of colouring to the other slender circumstances urged in this cause, as evidencing in this poor fellow, "a heart regardless of social duty and fatally bent upon mischief."

We admit Cox applied to Caffry, but deny that the manner of the application or the conversation evince any bad intentions, but merely show (what he has much cause to regret) that he was the dupe of the artful M^cManus. It was in open day, at a public shop on the main street, where Caffry was a

mere journeyman, without any authority, in which he tells him openly, without any disguise, he had something to say to him, and on being informed by Caffry he had not time then, but would call at his house : Cox, unlike a man hot on the scent of blood, discovers no impatience, betrays no disappointment, shows no anxiety. This openness of conduct—this indifference of manner, instead of discovering a mind intent on planning mischief, shows a soul superior to, and freed from those impulses which constantly encircle the guilty mind. If he had the knowledge the gentlemen impute to him, and the feelings inseparably connected with it, is it possible to believe that his conduct would have been thus open, thus public, when so easy an opportunity of intercourse with Caffry, without the intervention of a human eye or ear, could be obtained ?—Indeed, to every unprejudiced man, such a line of conduct pursued by Cox, must show that M^cManus never trusted him with the secret ; or why, at the very time that M^cManus was planning the means of avoiding detection, should he thus have left uncovered and totally exposed his first measures, which it was important for him to conceal, considering the peculiarly delicate situation into which he was about to bring Cox, to be of service to him in the day of trial ? The fact evidently was, that Cox, totally ignorant of M^cManus's designs, acting from very foolish, but honest motives, having no inducement to secrecy, neither thought of, nor used any concealment or disguise. Accordingly we find, if so plain a result could stand in need of confirmation, the same uniform disregard of, and indifference to the publicity of the business by Cox ; while the very reverse in the case of M^cManus.—Thus, when Caffry called at Cox's in the afternoon, found him engaged with the referees about the law suit, enquired of him what he wanted with him, Cox at once answers him openly, he could not tell him till that business was settled. Could Cox have apprehended any harm, to result from what he spoke of thus openly, thus publicly, and in case it was evil, thus unguardedly ? Surely not, unless you believe him to be a fool, or a madman. Such conduct would be like that of a man having committed murder, going into the streets and highways, nay, even to the very house top and proclaiming it.—So little did poor Cox concern himself about this murdering scheme of which the gentlemen would have him so full, that this law suit had driven it so entirely out of his head, that he did not remember to mention it to Caffry that night. How different is the conduct of M^cManus, who really had evil de-

signs to plan and execute—when he comes to sound Caffry and to gain his agency he embraces the unsuspecting opportunity of their walking from the Justice's—separates him to himself—makes the proposal, and converses on the subject in that low tone of voice, calculated to exclude all hearing and understanding of what they were talking about, by Bretz and Cox who were before. Here then you have a plain line of distinction between the conduct of a man who had plans and designs of evil to effect, and a man who had none, acting from the impulse of the moment. The one is artful, covered and designing, the other is blunt, open and indifferent. Notwithstanding the evidence for the prosecution has proved that the proposal of M^cManus to Caffry was made to him when they were walking by themselves, at least a rod behind Bretz and Cox—that it was spoken in a low tone of voice, evidently designed to exclude Bretz and Cox from hearing—that at the time it was spoken Bretz and Cox were talking as loud as people usually do in discourse with each other—I say notwithstanding all this, added to the other evidence which I have pointed out, of Cox not being let into the secret by M^cManus, will it still be contended that it is probable, nay more, that it is even possible, that it was not only heard by Cox but so heard as to be understood by him? And surely the expression used by Cox, a day or two after, to Caffry, when he asked him if he would do what they or we were talking about before, gives no aid to the extravagant supposition of Cox having heard and understood what was said by M^cManus. In the first place, the expression is so equivocal as to leave its import a matter of doubt and conjecture, on which ground this jury is bound to refuse it any weight against the life of this man. In the second place taking it in its strongest sense against him (in which sense I contend it cannot legally be taken) it only implies that he thought he knew what they had been talking about, but in what way he got his information by over hearing them, or by M^cManus's telling him something, but what that something was, whether that he was going to kill the Shitz's, or, what is far more likely, that he was going to run away with some rich heiress, is left utterly in the dark. In the third place we contend it related to some foolish story which the art of M^cManus had imposed on the ignorant credulity of Cox, which he supposed he had mentioned to Caffry, in which case the expression “we were talking of before” would be exactly appropriated. But fourthly, this equivocal expression and the proposition it was brought forward to support, is not left to rest upon construction, for we have the ex-

press declaration of the man himself (and all he said must be taken together) in answer to the question put to him by Caffry, if he knew what it was—that he did not.

The fair result of this examination of the testimony at Manheim, I submit with confidence to you, is, that it is not proved that Francis Cox was privy to, or knew of the evil designs of M^cManus, or that he heard and understood what passed between M^cManus and Caffry; but that, as far as a fair construction of their words and actions, which are the only grounds from which you can judge, go, we are warranted to say, he did not know his designs and intentions, and that he did not hear and understand what passed between M^cManus and Caffry. But supposing, though not admitting, that it was in full proof, that Cox was standing by and distinctly heard and understood every thing which passed between M^cManus and Caffry, I would contend with great submission before this Court and Jury, that it does not amount to proof of any evil intention imputable to Cox, and much less any imputation of participating in the perpetration of that inhuman and murderous crime with which he stands charged. Here then at once to reveal the nothingness of this proposition which the gentlemen consider as all in all in the evidence they have offered; it states no object; it makes known no scheme; it proposes no end to be effected; a whisper of murder is not heard in it; a hint of any specific crime is not to be gathered from it; but, on the contrary, it is accompanied with an express declaration, in answer to Caffry's enquiry, in the language of the witness, that "it would not hurt him at all." It is true it is accompanied with the common mummery of imposition, a refusal to tell till the oath of secrecy was imposed and that they were then to wallow in wealth by which the artful and designing in all ages and all countries first excite the vacant curiosity, and then pervert the folly, weakness and credulity of mankind, to serve their fraudulent and many times their wicked and bloody purposes. Permit me to ask any of you, if you had heard this proposal made before this bloody tragedy was acted, if you would have discovered from it that scent for human blood, with which it is now said to be so rank, since the horrid fact has happened? Surely not. In the wide field of conjecture you would in all probability have considered it as an attempt at some imposture to acquire gain, which would be ridiculous in the eyes of every one but those who were imposing, or imposed on, by

it:—That it was a scheme of wilful murder, would be the last suspicion which would have entered the heart of any man whose wonted meals were not served with human blood.

Remember, gentlemen, I now speak of what you would have thought of this proposition at the time it was made, when the peaceful security of Francis Shitz's house had not been violated; when midnight repose had not invited murder; when innocent blood had not been unprovokedly, inhumanly and most barbarously spilt: In short, gentlemen, at a time when you were fully possessed of yourselves, cool in your deliberations and unbiassed in your judgments. How then can you impute to this man a knowledge of M^cManus's intention to commit this crime, from a proposition which in itself contains no intimation, express or implied, that any such crime was to be committed? To do so, would be to convict, not only without violent, without manifest proof, which the law enjoins you to require; but without any proof whatsoever. I therefore conclude on this head that if Francis Cox heard and fully understood what M^cManus said to Caffry, (which is the utmost the gentlemen can contend for), that it would furnish no rational ground to believe that Cox was privy to and knew of the designs of M^cManus, much less would it furnish that violent presumption, that manifest proof, which cannot be contradicted and which it is your bounden duty to require. Permit me now to pass from this ground work of the charge to the first stage in the superstructure which is attempted to be raised upon it, and enquire whether there is not the same want of proof; the same presumptive evidence of Cox being the dupe of M^cManus; and the same doubt and conjecture hanging round the evidence taken in its greatest latitude, against the prisoner. Cox went with M^cManus to Geiger's the day before the murder was committed, and slept there that night. This I confess is a main and connecting link in the chain of the evidence, and if it had been preceded by plain and manifest proof, which could not have been doubted or contradicted, of Cox being privy to the designs of M^cManus, and followed by like plain and manifest indications of Cox endeavoring to conceal the designs, and cover the conduct of M^cManus from detection, it would have furnished strong grounds to call upon the jury for their most serious and solemn consideration, to say whether they did not amount to that violent presumption, that manifest proof, which would justify them in taking away his life. But divested of these es-

essential ingredients it is reconcileable in Cox's total ignorance of M^cManus's designs, and in its strongest application against the prisoner, terminates in that wide field of doubt, conjecture and uncertainty, that no humane man would consider himself exempt from the imputation of cruelty, were he to destroy, on the strength of it, the life of a sparrow, let alone that of a fellow creature. Indeed, slender as it is in itself, it is attended with circumstances which derogate from its weight. M^cManus had worked and was acquainted in that neighbourhood; had previously borrowed Geiger's saddle, and had the plausible pretext of returning it, to hold out to Cox, to disguise his real object, at the same time that he wrought on his easy credulity or companionable disposition to accompany him. When they were there in a way so easily accounted for from the circumstances, to hear the witnesses detailing with so much emphasis, that M^cManus got his boots drawn and left them down stairs—though the landlord offered slippers without being asked for them; that Cox went up to bed with his shoes on, though the witness tells you on his cross examination, that he never gives slippers to men with shoes, that they went to bed so early, though it was just eight o'clock, and the other travellers went about five minutes after, that they slept together—though it was expressly enjoined by the landlord: no dispassionate man can wink so hard as not to see that they are speaking from their feelings and not from that cool recollection, and unbiassed judgment, which ought to influence them.—

This will readily excuse me to you for passing over unnoticed a great deal of that very little matter which fell from the witnesses and coming to the few circumstances which can be pretended to influence this cause. These consist of M^cManus's taking Cox's handkerchief and shoes, of Cox's conduct on the different occasions he was applied to by Geiger—his pretending to search in the language of the witnesses, when he did get up, and his conduct when M^cManus returned. As to M^cManus having taken the handkerchief and shoes, there is no evidence to show Cox consented to, or ever knew of his having taken the shoes (and the taking of the handkerchief he told himself,) without which it cannot assume even the shadow of testimony: and if it had appeared he did consent to his taking them, there could be no crime in it, without he also knew what was his intentions in taking them. So that, for you to give any weight to this circumstance, you must presume without any proof of it, that he did consent to his taking them, and that he knew what they were

taken for, directly contrary to that presumption the law and humanity make it your sacred duty to make, in favor of the innocence of the prisoner. But we are told that his indifference on the first enquiry of Geiger respecting M^cManus, and his backwardness in getting up when repeatedly spoken to by him, with his pretending to hunt when he did get up, all show him privy to M^cManus's designs, and that he knew where he was—that while every one else was agitated and alarmed, he was calm and indifferent. I agree, that as the tree is known by its fruit, it is a fair rule where a man's actions are unequivocal, to judge of his conduct by them. On the present occasion, I utterly deny that the actions of Francis Cox, which are relied on as coinciding with the sentiments of his mind, are of that kind which authorize any unbiassed man in making the conclusion these witnesses do. In the first place, they do not speak a direct, plain and manifest language, which they ought to do to warrant an inference so highly penal; but on the contrary, taken in their strongest light, depend on such a variety of circumstances, that their result must be the subject of doubt, conjecture and uncertainty.

When Geiger first went up to see if M^cManus had returned to bed, he found Cox awake, who, on his enquiring, told him what M^cManus said was the occasion of his going out. In this, then, there was surely no ground of suspicion; but the contrary, as Cox, who, on the gentleman's principles, would have been very deeply interested in making it be believed, that he was asleep when M^cManus went out, affects no disguise, does not, in the language of the witness, pretend to be asleep, though it might have been done without suspicion, but tells him he had taken his handkerchief. After Geiger had been again sent out by his wife—had hunted without effect—he returns, goes up to Cox again, who, he says, pretended then to be asleep, wakes him, and tells him he wants him to get up and help to hunt, which Cox refuses, saying he supposed M^cManus had gone after the girls. Why should Cox now pretend to be asleep, when it could answer him no purpose, after he was awake the first time, when his pretending to be asleep and imposing that disguise on Geiger, would have been all in all to him? He had walked and rode alternately from Mannheim that day—it was at least, if not past the usual hour of sleeping—a considerable interval must necessarily have been spent by Geiger in hunting, added to the want of motive to pretend sleep, fully establishes a strong probability that he was actually sleeping, and that Geiger's

suspicion that he was pretending, was conjured up by his own alarmed and frightened feelings. As to his not getting up, and the supposition he made as to M^cManus's absence, they appear to me to be the result of his situation, fatigued and sleepy, and a firmness of mind, not liable to be alarmed with the stranger's story of a young Irishman, full of flesh and blood, being frozen in a neighborhood, thickly settled, in which he was well known. He must have been a strange compound of weakness and credulity, who, not apprised of M^cManus's designs, could in Cox's situation have been induced to comply with Geiger's request. But it is alleged, that after the third hunt—after he had alarmed the neighbors, when Geiger roused the Jersey-men, and was about leaving one of them to watch Cox, that he got up, went out with them and pretended to search, but was not in earnest. From the account Geiger and wife have given of their own feelings, it is apparent that every one who DID not feel and act like them, would appear to their agitated minds, to be pretending not to be in earnest; because Cox is indifferent, cool and composed, they conclude him criminal—because he is not agitated, forward and bustling in the search, they suppose him pretending: and it is these apprehensions and appearances they have been giving you for evidence, in the place of what you ought to have had laid before you, the undisguised facts, and the cool, unbiassed observations made on the facts at the time. That Cox did not act that part, we readily admit; but that he acted under any disguise, we deny to be a fair deduction from his conduct, taken in parts or collectively. One would have supposed, that when Cox found M^cManus out at the door, and came down and opened the door in which Geiger and wife, and the Jersey-men were, and told them M^cManus was standing outside wanting to come in, that even the hot scent these witnesses had, would not have been able to discover any evidence of guilt in it, and yet it is made a main prop of this prosecution; that when Cox opened the door after this, that no one saw M^cManus, as they went straight up to bed. And why did they not one and all of them see him? Was it Cox's fault? Or did they suppose, when Cox threw open the door, informed them M^cManus was at the outer door, and thus gave them an opportunity of meeting him, seeing and inspecting him, that he was only pretending, and that he was not in earnest? It would surely have been a very Irish way of pretending.

But I contend that the whole of Francis Cox's conduct at Geiger's, on fair construction of it, speaks a language directly the reverse of that which the witnesses and the prosecution impute to it. That instead of its evidencing a knowledge in Cox of M'Manus's bloody intentions, and that he was then gone to carry them into execution, it shows, as far as it proves any thing, that Cox was totally ignorant of M'Manus's designs; that he was duped by him, and that he had no apprehensions that any evil was transacting. If Cox had been really an accomplice with M'Manus, his first object would have been to have watched the feelings, and acted up to the wishes of Geiger and his wife, in all his movements, as the surest means of avoiding their suspicion, and working out his own safety, at least, if not that of his companion. He would have been put immediately on his guard, by the open discovery made by Geiger and his wife of M'Manus, when he went out, and which Cox must have been fully apprised of, as the conversation which took place, was continued and loud on the part of Geiger and his wife, within hearing. He would therefore have been fully prepared to have acted his part in the scenes which took place between him and Geiger, by being asleep, instead of being awake, when Geiger came first up—by feeling as Geiger felt, instead of showing that indifference he discovered on being told of the alarm—by showing that ready forwardness which Geiger's perturbation suggested, instead of that cold refusal with which he met the pressing intreaties of Geiger—by hunting with that bustling activity and zeal, which would have gone hand in hand with Geiger, instead of doing it in that fauntering careless way, which led Geiger to think he was pretending—that he was not in earnest—by carefully remaining up with them in the house after the search was given over, watching their movements, and keeping pace with their sentiments, instead of crossing them in their conjectures, slighting them in their anxieties—returning to bed with his wonted unconcern, leaving them to brood over their own uneasiness and distraction, to his almost uncertain ruin as well as that of his companion. To me it appears impossible to reconcile Cox's conduct in being awake—in recognising M'Manus going out—in telling about the handkerchief and not of the shoes—in being so indifferent—in refusing to rise—in being so at cross purposes with the feelings of Geiger, to the plainest principles of common sense, if you suppose him to be privy to the designs of M'Manus, whereas, in supposing him the dupe and tool of M'Manus, ignorant of his intentions, his conduct is the natural result of

his situation, his want of motives, his openness and his firmness of character, which would call for no concealment, could stand in need of no disguise. At the time that I contend and hope I have shown, that Cox's conduct may much more reasonably be referred to a want of motives and a total ignorance of the evil designs of M^cManus, than to his being an accomplice with him, playing the part assigned him in this horrid drama, yet it does not strike me that the conduct on which we comment is entitled to that settled, marked character which can furnish a conclusive inference either way. Sure, I am, that it is enough for us to show that it is problematical in a case where law and reason join in saying that the evidence to convict should not only be manifest, but so manifest that it could not be contradicted.

We have gone further, and shown that when weighed in scales equally poised, our inferences preponderate. The deduction then which I draw from this head of the testimony is, that there does not exist any grounds from which a violent presumption necessarily implicating Francis Cox in this inhuman tragedy can be drawn, but on the contrary so far as the testimony is operative, it establishes a strong probability that he was a mere dupe, ignorantly led into his present critical situation by the artifice of M^cManus, and consequently that it can give no support to the tottering foundation formed out of the transaction at Manheim. As to the unmeaning stupid story of Cox when intoxicated, abused and chagrined, which composed the third opening of the gentlemen, and which was kept in reserve (though known to them long before) till every thing else was exhausted, as it pretends to inculcate Pat. Donagan, I shall, to avoid repetition, defer the consideration of it till I arrive at that period of this cause, when I can with propriety, consider its force against both.

Permit me to solicit your attention to that system of evidence laid before you against Pat. Donagan, which the gentleman who opened on behalf of the Commonwealth, stated to be so point blank, that it will certainly bring him to the gallows. I trust, before I sit down, to be able to convince you, that instead of it being point blank against the prisoner, it has in reality no point, and that even its colouring is all borrowed from that delusion and prejudice, which has so generally settled on the public mind. To dispel this illusion from independent and honest minds, requires nothing more than a candid discussion of the grounds of charge which arise out of

the evidence. These resolve themselves into six points : 1st. That Pat. Donagan was an inmate at Hauer's about a year previously to this mournful catastrophe—was often in company and intimate with him. 2dly. That he applied for the *wie lerkomme* drops repeatedly to different persons, both in company with Hauer and alone, discovered a peculiar anxiety to get them, offering at different times, twenty, thirty, and fifty pounds for a gill ; and at one time he and Hauer said they must be had, if they cost five hundred or a thousand pound, for the purpose (as the gentleman stated in his opening although there is not a particle of proof of it) of poisoning the Shitz's. 3dly. That Pat. Donagan the latter end of October or beginning of November, preceding the murder, bought half a quarter of powder of George Kapp, who thinks the bag and powder found after the murder at Shitz's, are the same he sold Donagan, though neither had any mark. 4thly. Pat. was at Logan's, in company with M^cManus, when the latter had a warrant against him, went armed to keep off the constable, and then threatened Jacob Miller who came there, if he came near, apprehending him to have the warrant. 5thly. In the language in which it was opened, that he had the precaution to leave Hauer's and sleep at a neighbour's, where he insisted on having a person to sleep with him, though he never did so before when he slept there.— 6thly. What passed in prison.

To assist you in forming a just estimate of them, I shall consider them first individually, and then collectively. That Pat. Donagan should have ever had his home at the house of John Hauer, has been emphatically his misfortune ; but it is neither a crime, nor any evidence of a crime. Men in low life, obliged to make their livelihood by the sweat of their brow, and forced to make their homes at places which suit their business, very seldom have much choice in fixing themselves. The business is neither profitable, accommodating, nor agreeable, to persons in respectable circumstances. This class of people are, therefore, necessitated to make shifts, and accept of such places as offer. Sufficiently hard is the condition of such men, without wantonly imputing to them the vices and crimes of those with whom they so sparingly reside. Patrick Donagan's duty and inclination to pursue the unwearied toil of honest industry, left him little time to saunter away at Hauer's.— The business of stone quarrying, and race digging, which he pursued in different and distant parts of the country, made his ordinary returns to Hauer's

much less frequent than that of common inmates who usually confine their pursuits to the neighbourhood.

Hence, opportunities for contracting intimacies and attachments, and forming confederacies, must have been rare indeed. Much less would it be in his power to discover the character and conduct of Hauer, and his household. But, it is said, that Patrick kept company, and was on terms of intimacy with him. This would be the fair result of prudence and discretion. For strange and untoward indeed must be the conduct of that man, who would slight the ordinary relations of intercourse, which subsist between an inmate and his landlord. Such civilities evidence no attachment, much less any confederacy. It is true, Peter Shitz mentioned that whenever he came to Hauer's, when Donagan was there, Donagan and Hauer went out and whispered something. No man has less disposition to remark on the conduct and evidence of this young man than I have, yet as to this part of his testimony, it is in all probability more the result of subsequent feelings, than of observation made at the time, and to any one who has heard the fiery ordeal he has passed through, it will not be thought strange, that things in themselves the most indifferent, should appear to him magnified into a subject of well founded suspicion. It would be strange indeed, if men bent on his destruction, should in this very suspicious manner be concerting the means of effecting it under his very eye, when nothing could exist which induced such a bare faced necessity. I for my part, cannot entertain so mean an opinion of the understanding of my client, as to believe that if he had been a person destined to act a part in this tragical drama, he would have hazarded marring the plot by such undisguised and suspicious appearances; at all events, it is no evidence, as it is perfectly unknown what was the object of it; and you are not at liberty to conjecture about it. If you were, the probability is, from the manner in which it was done, that it related to something no way connected with this business and perfectly innocent in itself.

The second ground is considered as a main prop in this prosecution, and has been introduced with all that display, which was necessary to give it its full impression. I trust, however, it will be a very easy matter, in the favorite language of the public prosecutor, "to knock away the blocks" on which this prop is raised, and lay the hollow and visionary fabric prostrate and

harmless at this unfortunate man's feet. That Patrick Donagan did apply for and search after the *wiederkomme* drops, with an anxiety and zeal, bordering on enthusiasm, and with a credulity commensurate with its mysterious virtue, was acknowledged by him on his first examination, and would never be denied by him in any situation; but that he entertained evil designs in so doing, or harbored a thought of injury or prejudice to any one by it, we utterly deny. On this we take issue and call on the gentlemen for their proofs. The affirmative lies with them, and it is their bounden duty to prove it. Nothing can be taken for granted if the inquiry involved in it the value of a cent only; much less can it be when the life of this man is staked on the issue. I then call upon the gentlemen to show, to point out to you, to lay their finger on that part of the evidence which proves that this man had bad intentions; that the object for which he was getting these drops was evil. To prove to you that the evidence does not contain any such proof, and that, on a fair construction, it carries with it a contrary presumption, permit me to consider it as stated to you by Doctors Staufe, Orndorf and Koenigsmaker. As the facts related are fresh upon your minds, I shall not trouble you with repeating them, but refer myself entirely to you for the pertinency and propriety of my observations upon them.—By a recurrence to these gentlemen's testimony you will find the grounds of accusation resolve themselves into the following particulars. That Hauer was concerned; that they were sought after by Donagan with great anxiety; that he actually offered fifty pounds for a gill, and declared they must be had if they cost a thousand pounds; that he was hurt and very angry at Orndorf's not getting them; that when asked if they were going to try projects with them, he said, yes; that they were the colour of laudanum; that they had got them before, but they were not strong enough. I shall consider their weight, and point out the concurrent circumstances which disprove and destroy their application.

Hauer was concerned, and certainly the projector of the necromancy, which in all probability was designed to hang Donagan instead of hurting Shitz, by which he expected to sweep the hard earned money of Donagan into his own pocket. In the wide field of conjecture which this business opens, Hauer's character and conduct seem to lead to the above conclusion. But be that as it may, there is nothing disclosed by the conduct of either,

which points out poisoning as the object of these drops. Judging from the essay made with them, they were mere jugglery which was to prepare the way for the substantial part of the business, the hanging. That any thing could be effected by them upon Peter Shitz was totally out of the question, as he had already experienced the effects of the scheme; and had removed to his brother's more than a year before. But with the gentlemen, to be acquainted with Hauer, is cause of suspicion; and to be concerned in any of his intrigues, though the object of them is utterly unknown, and the probability is that you are duped into and likely to be the victim of it, is cause of condemnation. To me it appears that the fair conclusion from Donagan's anxiety to have the drops, and his folly to purchase them at any rate, shows clearly that he had no evil intentions to effect by them. The application at Lebanon, a considerable town much frequented, at a shop in the habit of doing business, was in open day, in the most usual and public manner, to a gentleman of character, without any reserve or injunction, accompanied with the most undisguised conversation on the subject. He speaks of the reserve of physicians—tells him he need not be afraid of their doing any harm—mentions the places where, and one of the gentlemen of whom, they had been got—proposes getting from Doctor Luther the Latin or English name of them to enable Mr. Staufe to procure them—the same anxiety to get them is accompanied with the same openness, the same unreserve in the application and intercourse with Doctor Orndorf—he tells him, Doctor Fahnstock had them, of his applying to him and the Doctor's laughing at him—urges and tempts him to apply to Mr. Fahnstock, to Doctor Keller for them—tells him they had been got of Luther, but were not strong enough. And even at the election at Shæfer's town, in a tavern, in a room full of company, does he tell Hauer of his failing in success, on which it is openly mentioned, in the presence of Orndorf, that they would have them if they cost a thousand pound. At Doctor Kœnigmacher's the same publicity is manifested. Donagan takes with him when he makes the application, a man of confessedly good character, and enjoins no secrecy. Apprehensive that his failure heretofore in getting the drops, might have arisen from some possible bad application which they might be liable to, and which the Doctors might have apprehended, and apprized that he was thus laying the train by which the mine would inevitably be sprung upon him if he had evil in view, we find him coming forward and offering security to the amount of one thousand or

ten thousand dollars not to hurt any one with them. To make the first step towards murder by poison, in the face of circumstances so unpropitious to success, and so ominous of detection, evinces such gross folly and stupidity, that nothing short of positive proof can entitle it to belief with any reasonable man. It would surely be committing murder for the sake of being hanged. But it is said he was sensibly alive to the disappointment at Orndorf's, and was angry with him. The more foolish a man's projects are, the more sensibly he feels a failure in effectuating them. His displeasure at Orndorf was however a tribute due to the principles of moral rectitude. Orndorf had promised him, not only once or twice, but many times, to go in a limited time to Dr. Fahnstock's, and had uniformly broke his promise and disappointed him. If Patrick had been dead in feeling to this repeated disregard for truth, it would have argued much more strongly than his irritability at it, his capability to commit the deed they impute to him. Had it not been particularised in the opening for the prosecution, that Donagan's answering yes, to the question put to him by Doctor Staufe, that he supposed they were going to try projects with the drops, was nearly tantamount to a confession of the views they impute to him, I should have been at a loss to discover in an answer so evidently suggested by the transaction itself any criminality. To have denied that he had projects to be effected by drops, for which he was willing to give any price, would have evidenced a lying spirit and bad motives. The answer was true, and given with that readiness and complacency which showed him neither influenced by apprehension nor dread. On the Doctor's asking him the colour of the drops, we find Hauer pointing to some liquid of a brownish colour, from which the gentlemen infer, though the Doctor did not intimate any thing like it, that it was laudanum they were after, which unduly taken will poison, and having got thus far, they eke it out with another conjecture, that Donagan intended to poison, and having the stuff and intention thus manufactured, there is nothing wanting but the persons to be poisoned; they therefore add the Shitzes, which produces the proposition to be demonstrated, that Donagan was in search of laudanum to poison the Shitzes. In this way allowing one inference to produce another, with the aid of a few conjectures to supply vacancies, the most upright man or set of men in the community may be strung up. Far be it from me to think any of the gentlemen concerned for the prosecution capable of wishing to influence it to this extent; every person who

knows them is convinced that it is impossible ; but the zeal of duty, the sensibility of feeling and the diffusive latitude of the evidence on which they are to be employed on the present occasion, call upon them to guard against those extremes of which the opening certainly partook, not intentionally I am sure, but from incorrect statements which had been made by the witnesses, of what would be the testimony. The only ground which remains to be considered, that has been advanced as supporting the conjecture, that Donagan was in search of drops to poison the Shitzes, is, that it was mentioned both to Doctor Staufe and Doctor Orndorf, when he spoke of the drops got of Doctor Luther, that he said, they were not the real stuff, they were not strong enough ; whence they make the deduction, that if they had been strong enough, they would have poisoned and had been used to poison. This is begging the question. They take for granted what we utterly deny, and what the whole story disproves, that the quality of the drops applied for to Doctor Luther were poisonous. Here they should begin and establish their premises, before they attempt to draw their conclusion. There is no crime which the gentlemen could not establish against the most innocent man on earth, by this sort of logic. If the drops applied for to Doctor Luther had been designed for murder, is it possible to believe that they would thus openly and unnecessarily be brought forward as the subject of conversation to all persons and on every occasion ? Surely not. Indeed, from every account we have of those drops, they appear to have no qualities but what are extremely innocent. Patrick had been persuaded to believe they were calculated to exhilarate and enliven the spirits, and from actual experience of their effects on Peter Shitz, we are warranted in concluding they possessed no noxious quality. It is apparent, Hauer used them to catch the idle curiosity and to fix the wavering credulity of those he attempted to practice upon in a more substantial way, without expecting from them any other result.

I have thus considered the weight of those grounds which have been opened as proving that Patrick Donagan sought after the *wiederkomme* drops for the purpose of poisoning the Shitz's, and trust, that considered individually, so far are they from proving it, that they actually disprove it, and show that he had no such designs. I would solicit a moment's attention from you, to their collective strength ; for I admit, that a number of circumstances taken

together, may prove a fact which considered separately, they would not establish. The gentlemen's conclusion from the testimony of Doctor Staufe, Orndorf, and Koenigmaker is, that Pat. Donagan wanted to procure the *wiederkomme drops* to poison the Shitz's. Our first answer is, that it is nowhere proved that these drops were poisonous, and you are interdicted by your oaths from presuming it. In the second place, we show you that Donagan's conduct throughout evinces he had no such intention, because it was uniformly open, public and undisguised, and marked with those palpable and inelible traces, which would have rendered detection inevitable, in case such intentions had gone into effect. Thirdly, if poisoning had been intended, it would have been effected without expence, without exposure, and without a probability of detection. Doctor Staufe tells you, an ounce of arsenic, which he would have sold to any one for six pence, without notice or enquiry, would have swept the whole family of the Shitz's from the face of the earth. To men, whose object the gentlemen say was murder, money and concealment; I leave you to judge, which of these means of effecting them by poison would have been preferable. And fourthly, we show you that in the ignorance, the folly, the credulity, the interest, and the practices of men, this conduct of Donagan's is more easily and rationally accounted for, than by supposing its object to be blood. We contend that the whole transaction evidently speaks it to be one of those many impostures which we see daily practised by persons wishing to acquire gain from a pretended knowledge of the occult sciences; and that Pat. Donagan's mind was so powerfully influenced by it, as to induce him to become a perfect dupe to it. That the principles of this delusion are strongly implanted in human nature, no man of information or observation can deny.

In all ages and in all countries (notwithstanding, they have had line upon line and precept upon precept against it,) it has continued to be practised. When it comes forward under the seductive appearances of innocence, of intention and injury to no one, to offer to man on the easy terms of belief, secrecy, and concurrence, wealth—unbounded wealth—the object of his restless days and anxious nights, it speaks a language to the easy credulity of the laborious and uninformed class of mankind, which they find it difficult to resist, and which they never repel with indignation. And even amongst us, “the most enlightened people upon earth, broad is the way that leads

into this fairy field of incantation ; many (very many) are they that enter in thereat." The human mind once unbalanced, comet like

—" runs lawless through the void"

" Destroying others, by itself destroyed."

The young and the old, the industrious and the lazy, the gay, the serious, the religious and the austere, are frequently found paraded on the same circle performing with all the zeal of sincerity and the officiousness of anxiety, that ritual of absurdity which is to dissolve the enchantment, and surrender up to its votaries the treasures which are to reward them. Last week, in York, there was disclosed an illustrious sacrifice, made by upwards of one hundred persons, reputably settled and connected there, of all tongues and languages, of their understanding, and even of their common sense, to this demon of seduction in a project, the process of which was much more absurd and expensive than the present, but the object of which was the same. And if I mistake not, numbers of the good people of this respectable county of Dauphin, at a period not very distant were the dupes of a like species of delusion.—Charity, then, which is the mantle of religion, and the fairest ornament of our nature, must be a total stranger to the breast of that man, who could impute murderous motives to this unfortunate prisoner, from a piece of conduct which resolves itself on the plainest principles of common sense and its own internal evidence, into one of those ordinary but delusive occurrences which so often excite the curiosity of mankind. Indeed, the native and gentle spirit of humanity is so infused and predominant in the rules of law which presume innocence, and exclude from weight in capital cases, all conduct which can be reasonably accounted for in any other way that your duty concurs with. What must be the inclination of every humane mind, to refer this piece of conduct and its result to that mode of accounting for it, which stands with mercy ? The third ground of charge respects the powder purchased of Mr. Kapp. To treat this head in the manner it deserves, would ill become this sacred day, and the present solemn occasion. My observations, therefore, will be confined to show how very inconclusive and destitute of any rational applications it is. The simple fact is, that about the beginning of November, Donagan bought half a quarter of powder at Kapp's store ; in the ordinary run of business, without being accompanied with any circumstance to make or fix attention. It is true you were told in the opening, that Patrick was fixed on to get the

powder for the business—that he asked for the best kind—and got it folded up in a particular way, like that of the bag found ; but as not a particle of proof has been given of either of these particulars, you are bound to discard them : and I am sure, the gentleman's candor who introduced them to your notice, will join in this request. In this fact then there is no indication of guilt. The space which lies between it and murder is truly immeasurable. But to give it application, be pleased to attend to what the gentlemen wish you to do. What is it ? Why, that you should presume Patrick Donagan bought the powder to shoot Francis Shitz ; that it was the identical powder that destroyed him. And on what grounds are you asked to take this daring, this inhuman flight, when you have the life of a fellow creature in charge ? None, I am confident to say. As to the idle account given by the witness, of the likeness between his bags and the one found at Shitz's, after it was considerably rumpled and dirtied before he saw it—tho' he reluctantly admits he could not distinguish between his own bags—or between bags made of the same paper by other people in the usual way—that numberless other store keepers might have like paper—as he did not get it all—and of the likeness between his powder and the powder found—though he admits he did not buy all there was of the same quality—that others in the neighbourhood deal with the same person also—that he does not keep any account or take any particular notice of those he sells powder to ; they cannot rise to the dignity of being noticed on this serious hearing. It is the mere opinion of the witness, formed from premises so equivocal and open to objection, that every man of experience must see that the opinion itself is rash and thoughtless in the extreme. So remote and improbable was this connection that it did not occur to the witness or agents of the prosecution for a length of time after the murder, though Donagan was apprehended and examined in their presence the next day in the very place. The gentlemen's fourth ground of charge is founded on what passed at Mr. Logan's, as related by Jacob Miller. I confess myself perfectly at loss to know where to begin to give a serious answer to this part of the accusation. The only fact upon which it is rested, is that he was there at the same time M^cManus was, who went armed to guard himself against the constable. It cannot be pretended that they were there on any formed designs, as there is no proof of any such thing, and it is expressly proved, that Logan and wife were in company with them. It cannot be pretended that Donagan

took any part in the improper conduct of M^cManus, or countenanced him in it, as their own witness proves expressly that he did not. Indeed, so entirely harmless and unlike a prelude to murder was the scene, that even their witness tells you he joined them, and spent at least half an hour in their company drinking with them. If merely happening to be in company with M^cManus, furnishes any evidence against Donagan's life, I suspect the next prosecution for aiding to commit murder that will be heard of in the County of Dauphin, will be against Logan and his wife, not only for being in company with M^cManus, but allowing him to be at their house—and against Jacob Miller for intermixing and drinking out of the same glass with a man who intended to commit murder. How tottering must the superstructure be which stands in need of such arguments as these to support it. As the causes of objection multiply they increase in ingenuity and curiosity, of this we have a very signal display in the fifth head of accusation. Donagan, the opening says, the night of the murder had the precaution to sleep at Mr. Illig's. The whole guilt of this proposition arises from the language in which the gentlemen have expressed the fact, and not from the fact itself which pointedly impugns it. He says, had the precaution which implies contrivance and design, and imports as used here, that Donagan went there to avoid suspicion and to conceal his being concerned. The fact as related by Mr. Illig, is, that he came there to settle with him, staid all night, and when they were about beginning in the morning, the constable came and took him. That Pat. expressed surprize at the murder, but neither changed countenance nor expressed any backwardness to go. Does all or any of these circumstances show precaution, or furnish any evidence of it? If such conduct shows precaution, I would be glad the gentlemen would point out that behavior on such an occasion, as they would account indifferent. At one moment the gentlemen make him the author of the plot, "riding in the whirlwind and directing the storm;" at another, when the moment of execution approaches, they assign to him the timidity of the hare, seeking shelter from the tempest he had created. Is it not on the contrary, the conduct of a man conscious of no crime? To help out this forced construction given to conduct in itself so indifferent, the opening stated, that Donagan was very anxious, and insisted to have some person to sleep with him that night: but when we come to hear the evidence, this allegation is not only not proved, but expressly disproved. Observe then the dilemma to which the prisoner is

reduced by this mode of reasoning. He is to be hung for going to Mr. Illig's that night, because, the prosecution says, it shows precaution, which evinces knowledge of the plot; and if he had been so unfortunate as to have staid at Hauer's, the gentlemen would then have made that demonstration plain of his guilt. So that going or staying, his fate was inevitable. Death was his doom. This mode of arguing resembles the bed of the bloody and inhuman Procrustes; if the victim was too long, he lopt him off—if too short, he extended the shivering members till they fitted. The sixth and last head which the prosecution has endeavored to rest upon, relates to what passed in jail, when the prisoners were intoxicated, as related by Mr. Rahm. It is not incumbent on me to extenuate, or in any way excuse the impropriety of this conduct;—It is apparent. But perhaps to a mind sensibly alive to the failings of human nature, an apology in some degree extenuating, might be found in the uninterrupted severity of a long and tedious confinement. Be that as it may, it cannot influence the question now trying. As to Donagan, it is not entitled to be considered as evidence against him; as declarations of one man not on oath cannot affect another, unless his conduct in the intercourse countenances and introduces it. Tried by this principle of law and reason, how do Cox's denunciations affect Donagan? Not in the least possible degree, because they are not only repelled with contempt and indignation, as the empty threats and lying suggestions of a mind stung and goaded to madness by abuse, insult and degradation; but he solicits, challenges, nay even defies him to tell every thing he knew of him that was consistent with the truth. If Cox had known any thing prejudicial to Donagan, is it possible to believe that this treatment of him, in the situation in which he was, would not have given vent to it? If Donagan had not been conscious that Cox could not say any thing of him which would be prejudicial, can it be believed that he would thus have acted with the boldness of the lion at a time when the fawning of the spaniel would have been his only chance of safety? The gentlemen's maxim is, that when liquor is in, wit is out, which applied to Cox, shows he had nothing to disclose, otherwise his situation would have given it full vent, and the secret would have been out.

In addition to these strong marks of Cox's declarations being the effect of rage, disappointment and degradation, which is no uncommon weapon of vulgar minds, when overcome in point of strength, we find when the time

arrived that they were to go into effect, by being disclosed to the Judge, and Patrick still continued opposed to a reconciliation, unless Cox would tell what he knew of him, that Cox declares he had wronged him. This evidently was the truth; for we find, when Cox was called on by one of the gentlemen concerned for the prosecution, to enquire if he would confess, which call alone, unsolicited and unasked for by the prisoner, pledged the Commonwealth to insure his impunity against any thing he disclosed, he declared in the most solemn manner before his God, that he knew nothing to reveal. Is it possible to believe, if Cox had been the man this prosecution represents him to be, that when tempted by every thing human that his soul could wish—impunity against his crimes, and liberty from his close and hard confinement, at the moment when this trying hour was rapidly approaching, that he would not have made full discovery as the means of his safety? Surely not, if you judge him by the ordinary principles of human action. But permit me to ask you what those secrets were, which this intoxicated man said he would discover? It no where appears in the evidence—the ingenuity of the gentlemen has not found a name for them—“shadows, clouds and darkness rest upon them.” Whether if they actually existed (which I utterly deny from the complexion of the evidence) they related to this business or to any other matter, is altogether unknown: And when the question is, whether these men are “to be or not to be,” I am sure your inclinations will concur with your duty in refusing to plunge into this unfathomable abyss to destroy them.

In this investigation I have endeavored to familiarize you to the principles of evidence which enter into this discussion, by explaining them and pointing out their application to the different parts of the evidence and their operations upon it: but as the principles of every science as well as those of the law, must in their nature be considerably abstracted and theoretical, and of course not so impressive on the minds of men unaccustomed to the habitual use of them, as the cases which gave rise to them, I must solicit your attention while I show to you the practical application of them from a few adjudged cases.

The preservation of life being the first object of nature and of society, our laws have manifested the most sacred regard for it. It has therefore become

the settled doctrine of our courts, in capital cases, that all presumptive evidence should be admitted cautiously: for the law holds it is better that ten guilty persons should escape, than that one innocent man should suffer; 4 Bla. 358. In the cases I am about to read to you, the grounds of this principle will be developed, and the most solicitous regard discovered for it. In the case of the King against Sprigg and Oakley, who were indicted for piracy in sinking a ship near the Isle of Man. The evidence was—[Mr. Hopkins then read the case of Sprigg and Oakley, as the same is cited *ante* p. 89.]

Here the jury see a host of circumstances all concentrating in the same point—the guilt of the prisoners rushing on the mind, and calling aloud for their conviction: yet, as their collective weight rendered the fact charged extremely probable only; but did not necessarily induce the commission of the fact by them (as the ship might be sprung or broken in her bottom) they were acquitted.

In the case of the King against Mason, who was indicted for maliciously and piratically burning a ship, to the great damage and defrauding both the owners and insurers, against the form of the statute: The facts appeared on the trial to be as follows: “The ship was laden with linen at Rotterdam and bound to Malaga, in Spain. The defendant when he received the bill of lading was ordered by the merchants and owners to put in at Lynn Regis, in Norfolk, in order to get a Mediterranean pass for his safety. It was proved by one witness, who was the carpenter of the ship, that the defendant when he came near to Dartmouth-bay, tampered with him to know what he would take to knock the ship on the head. It was proved by another witness, that the defendant gave the ship’s crew some bowls of punch on the day the ship was burnt, and made them all drunk; and afterwards ordered the witness to make a fire in the cabin, where there was none for a month before that time; which he did when the defendant and most of the crew were going on shore, except two who were very drunk; and that there was but one bucket belonging to the ship, which the defendant had ordered a sailor to fling overboard the day before the ship was burnt. The two sailors who remained drunk in the ship made oath, that they were sleeping there until the ship was so much on fire that they could not relieve her, nor themselves, but that they were

“carried off by another ship’s boat then in the harbor. Upon this evidence the presumption was very strong that the ship was burnt by that fire which was first made in the cabin; but this being only presumption, and no direct proof, the defendant was acquitted.”

The pressure of these circumstances against the prisoner, so encircled him with guilt, that one would be induced to think, that even a ray of hope could scarcely pierce the almost impenetrable darkness: yet, as it was possible (though most improbable) that she might have been unintentionally and unknowingly fired by the two sailors in their drunken reveries, or by other means still more improbable, the prisoner in favor of life was found not guilty.

Lord Chief Justice Hale, whose memory will be revered as long as law, learning or religion remain upon earth, has recorded the following instances of the deceptive and dangerous influence of presumptive testimony, for the instruction and warning of posterity.:

“In some cases presumptive evidences go far to prove a person guilty though there be no express proof of the fact to be committed by him, but then it must be very warily pressed; for it is better five guilty persons should escape unpunished, than one innocent person should die.”—[Mr. Hopkins then read the case from Hale, 289—90, as the same is cited *ante* pa. 87.]

Here you see how deceitful such testimony is, when speaking its strongest language—The actual theft—B. found in possession of the horse—in the act of taking him away—and unable to give any account of the manner in which he came into his possession, all irresistably concurred in pointing him out as the thief: and yet, alas! for the infirmities of human nature, the whole was a delusion; and the innocent blood of B. was spilt in the very sanctuary of justice.

Another case recognised by him is the following.—[Mr. Hopkins then read the case of the Uncle and Niece, as cited *ante* pa. 87—8.]

The child's entreaty, "Good uncle do not kill me," supposed to be "prophetic of her end;" the uncle's artifice, the effect of hurried thought and agitating fear—and the manifest detection of that imposture, led the jury to sacrifice the uncle to ensure the peace of the community, and to avenge the insulted justice of its laws. Lo! and behold! the child grown to womanhood, while her uncle was rotting in his grave for having murdered her, appears. I call upon you to contrast these cases with the present cause, and to mark how they blast the supposed operation of those inconclusive circumstances—those conjectured confederacies—those alleged embryo-plots—those indifferent actions—which have been raked together to form the ground work of this prosecution. I submit to you with great confidence, that the gentlemen's point blank proof against Donagan, is perfectly blank without any point—and that the testimony which was stated to be so convincing and demonstrative of Cox's guilt, is not entitled to be considered as even influencing the beam. Every thing that is doubtful—every thing that is conjectural: nay, more, every thing that is probable, and even highly so, must sicken and die under their influence: Nothing short of that which is so manifest that it cannot be contradicted, can weigh on the decision of so momentous a question.

Having gone through the testimony which has been laid before you on behalf of the prosecution, and endeavored to measure it by the rules of evidence, and to weigh it in the scales of reason, as it relates to both the prisoners, I find myself impelled to congratulate the humane feelings of every person who hears me, that it is not only found wanting, but greatly wanting—to establish either of the charges.

But although the prisoners might with great safety rely on the groundlessness of the prosecution for their deliverance; yet, impressed with a due sense of duty to themselves and a respectful deference for you, they have furnished, and we have laid before you (the only additional evidence which the nature of the case admits of on their behalf) the most respectable testimony of both the prisoners having, before this calumny was created, extensively and uniformly supported the character of quiet, industrious, sober and honest men.

This is the innocent man's coat of mail on the day of trial. Though in the vicissitudes of human affairs, it is not for him to prevent the arrows of affliction being pointed against him; yet, rare must be the instance, if it ever occurs, in which it does not protect and save him from their mortal aim. To the whispers of suspicion and the clamors of prejudice these men oppose—their laborious industry and honest reputation.

What more could you as reasonable men expect of them? One very important circumstance in favour of Donagan remains to be noticed. Though early apprised of the suspicions against him, we find he never offered to elude them by escape, notwithstanding his unrestrained liberty for a number of weeks gave him the most ample opportunity of effecting it. Is this the conduct of a man immersed in human blood on whom the eagle eyes of the most jealous suspicion were bent?

“As well might the rapacious tiger

“Persuade the hunted deer to harbour in his den”

As for a man whose soul was so polluted as the gentlemen would have Donagan's to be, to persuade himself to stand his ground on such an occasion and with such opportunities of fleeing, it must be repugnant to every feeling of human nature. Having experienced from this honorable Court, and the gentlemen of the jury, every attention and indulgence which could contribute to a fair and impartial discussion, on behalf of these unhappy men as well as for myself, I feel myself bound to tender them my humble and most grateful thanks. Conscious that this jury will remember with accuracy—will examine and compare with caution—will reason and deliberate with impartiality and candor—and will decide with that solemnity which exalts public justice, on the testimony alone, I submit with great cheerfulness to them the fate of these unfortunate men, under a full conviction, that upon the evidence and the law they must be found not guilty.

Messrs. CHARLES HALL, CHARLES SMITH, and MATTHEW HENRY,
Counsel for the Commonwealth.

GENTLEMEN OF THE JURY,

However painful may be the task which we are now to perform, yet it is a duty we are bound not to shrink from. There is justice due to the commonwealth as well as to the prisoners; if they are guilty they deserve to be

punished; and it will be required at our hands, that we should endeavour by a full and correct, yet candid statement of the facts, and just argument arising out of such facts, that they may not escape upon mistaken principles of humanity or compassion. We are not bound to go further, or to embark our passions in a case of this nature. And although it has not been frequent in capital cases to call in the aid of additional counsel on the part of the state; yet when the complicated nature of this case was considered, the probable length of a number of trials, and the many able and ingenious counsel employed for the different prisoners, the duty, falling alone upon the public prosecutor, would have been laborious in the extreme. It was, therefore, in this remarkable case thought prudent to engage other counsel, not for the purpose of oppression, but to assist in the fair investigation of the facts.

The prisoners at the bar have been very ably defended. Every thing that could possibly be done or said for them, has been done and said by their counsel. And if the result of this important trial should be unfortunate to them, it will not be because the greatest exertions have not been used on their behalf; for they have discharged their duty faithfully towards them.

It becomes us, then, with as much clearness as we are able, to consider the arguments you have heard on their behalf, and to oppose to them such reasoning upon the facts as we shall judge proper. You will give such weight to the arguments on either side as you shall coolly and deliberately think they deserve. If the reasons for an acquittal are stronger than those for a conviction, you will of course acquit. Having done our duty faithfully, but pressing nothing unduly, we shall leave the fate of the prisoners with you, well satisfied, that you will decide as your consciences shall direct you.

We, on our parts, do indeed believe, that, when the whole evidence is considered, and deliberately weighed by you, there can be little doubt but the result must be unfavourable to the prisoners. If we did not believe this, upon rational grounds, it would be unpardonable in us to press for a conviction, which will affect the lives of these men. But we are to convince your understandings, not to inflame your passions.

Gentlemen, there are three prisoners before you, whether they are to live or to die, depends upon your verdict. We are to consider how the evidence applies to each of them. With respect to John Hauer it would have been necessary to have said but little, if we did not conceive that the circumstances relative to him, furnish the strongest evidence to account for the conduct of the other prisoners at the bar. It is with an eye to them that we find ourselves constrained to detail, somewhat minutely the wicked conduct of John Hauer; not that we think it necessary to induce his conviction. He stands before you undefended; self-condemned; a melancholy instance of the depravity of man!

We mean to show, gentlemen, a deliberate, long premeditated plan on the part of John Hauer to destroy the lives of the two brothers of his own wife. That he made a variety of efforts to accomplish his dreadful purpose; alone, unassisted; with every possible degree of art to prevent a discovery; All these efforts failed. The signal escapes which they made, strongly marked by the finger of Providence; seemed to make no impression upon his callous heart. He was determined to persevere in his scheme of blood, until the innocent victims of his vengeance should be laid in the dust. With this iniquitous view, we find him combining with the worst of men; men who would not shrink from murder; fit for stratagems and assassinations, and who from their hardened minds, were competent to assist him in the dire plan he had conceived.

Gentlemen, it is hard to believe that a crime so malignant, could be deliberately contrived merely from the malice of the heart; where no previous provocation existed; no vengeance was to be gratified, unless some hope of advantage was to result from the deadly deed. But it is not difficult to trace the sordid motives which operated upon the mind of John Hauer. The testimony upon this point is express and conclusive. It was the inordinate desire of wealth that gave a spring to all his actions. So strongly did it influence him, that he was content to grow rich by iniquity; and if his darling object could not otherwise be accomplished, he was willing to obtain it by imbruing his guilty hands in his brother's blood.

Scarcely had old Peter Shitz grown cold in his grave, than the base disposition of the prisoner began to show itself. He became discontented with the provision which his father in law had made for him; and he attempted, without any ground to support him, to contest the old man's will; and accordingly entered a *caveat* against the probate of it, in the register's office of this county. But he was obliged to relinquish this vain pursuit. It is immaterial to inquire why Peter Shitz gave a less portion of his property to the wife of John Hauer, than to his sons. Every man has a right, by the law of this country, to dispose of his own property, by will, as he pleases. Probably he might, with an exact eye, have beheld the demerit, and sordid disposition of his son-in-law. Be it as it may, having so willed it, it was the duty of that son-in-law to acquiesce.

Finding it was not in his power to invalidate the old man's will; in pursuit of the same object, he endeavored to work upon the fears of his brothers; the ghost of their departed father could not rest, unless they would consent to share the property he had left behind him; more equally. Gloomy superstition must be called in to work the wondrous effect! Their reverence for a deceased parent, and an anxiety that his troubled spirit should again repose in peace, he supposed, would induce them to endeavor to atone, by a different distribution, for the supposed injustice their father had committed upon earth! Peter Shitz, whom you have seen, does not appear to be possessed of the strongest mind. How Francis was, we know not. Probably he differed not much from his brother. Minds such as theirs might be well fitted to receive those strong impressions by which superstition chains down the understanding, and keeps it almost constantly under the dominion of fear. Even in our day, the same belief which prevailed among most nations in the rudest stages of society, that the dead can assume a visible form, and revisit the living, fixes a strong hold upon the weak and uninformed; nor has the bright system of Christianity yet been able to eradicate its baneful influence over many minds. Under the powerful dominion of such a belief, there is no knowing how far the infamous art of Hauer might have wrought upon the weak minds of his brothers. But this imposture was accidentally detected by Hoffman. He dragged the spirit from his lurking hole. It was not then unsubstantial air; but a living body, clothed in flesh, in the shape of Hauer. He intreated him not to tell; but the faithful old man, who had been the

affectionate servant of their father, immediately told them of the imposition. This plan could then succeed no more ; his deep laid contrivance was detected and exposed. But still he did not relinquish his point. He went on step by step, and every step he took, he increased in guilt. He prepared his horrid mind for the most cruel actions. The youth and simplicity of Peter Shitz rendered him a proper subject for his malignant art and practices. He was able to bend him to his purposes. He is scarcely, at this day, more than eighteen years of age. Credulous to the extreme, he was induced, by Hauer, to believe the greatest absurdities. At the period we are now to speak of, Peter lived in the house of his brother-in-law. He was, however, desirous to leave it ; and accordingly hired with his cousin at Tulpehocken. This would have deranged the plan that Hauer had formed for his destruction. He prevailed upon him not to go, by reasons addressed both to his avarice and his fears. He persuaded him that every morning, by using certain drops, by some kind of magic, he might receive a purse, with five doubloons in it ; a mighty charm for him, if he should be able to accomplish it ! But lest he should be in the way of advice, and better information, it was necessary to keep him from his friends. He was told, under the most solemn imprecations and unmerciful oaths, that Shæfer and Bomberger, the executors of his father's will, were determined to bind him out ; that they came every day for him, and declared they would have him dead or alive. Terrified at this, he was induced to conceal himself. He dared not to go to his cousin's at Tulpehocken, for there he would be within the reach of his supposed enemies. By these means, with the aid of oaths and falsehoods, he fixed a restraint upon the young man's freedom of will and action ; and by impressing him with an ungenerous fear of his friends, he kept him completely under his own power. This could not be supposed to last long. No time was to be lost to bring on the tragedy he was about to act. There can be no doubt but that poison was, at this time, the means he meant to employ. Whether Hauer was the secret occasion of the general sickness of the family, which has been related to you, by mixing something with their food, without their knowledge, we can but conjecture. He had frequent access to the house ; and the idea certainly corresponds with all his conduct afterwards. It is a strange circumstance unaccounted for. The next circumstance is, his bringing the three phials from Lebanon ; and having impressed Peter with the idea that the drops in these phials were

to empower him to procure the daily purse; he induced him to drink of them. It is to be observed that Peter was reluctant, and unwilling to taste them; but Hauer assured him they would do him no harm. Accordingly, one evening, desirous to close the scene, he persuaded him to try to procure the purse; and the better to deceive him, he himself drank first out of the large phial; but the small phials, which he supposed to contain the deadly draught, he never touched; and when he thought Peter had taken sufficiently from them, and that the great end would soon be accomplished, he told him he would not try that night, he thought it was not worth while!—Can any one then doubt what were his motives in persuading the boy to drink out of those phials? Fortunately, however, for Peter, Hauer was deceived in his medicine: it turned out to be innocent and ineffectual; the potion he procured from **LEBANON WAS NOT STRONG ENOUGH!** Failing in this, other means must be pursued. Since the drops would not operate, another ceremony must be gone through. Under the continued idea of trying for the purse, he and his brother Solomon led him down to Wolfersberger's barn, a solitary spot, remote from any house, where no assistance could be had, and where the horrid business could be carried on without any human eye to observe them. But Providence was watchful over the fate of Peter Shitz. The base contrivance was again defeated by an unexpected accident; and the young man has providentially survived to tell the dismal tale.—In this lonesome place, in the silence of the night, (under such influence was the weak mind of Peter Shitz) Hauer had address enough to cause him to fasten a rope round his neck, with the end of it tied to the upper joist of the barn. In this situation he was prevailed upon to believe, that a spectre would appear with the purse of gold. When it was thought that he was secured, and that nothing upon earth could rescue him from death, Solomon Hauer pushed him from his stand, that he might hang and die. But the rope broke, and he fell upon the threshing floor of the barn, which he stained with his blood. The miscreants fled, and left him, in this unhappy situation to shift for himself, and escape if he could. Gentlemen, how callous must that man's heart be, who could do these things! Though all his schemes had hitherto been blasted, yet his hardened conscience was never touched with remorse; he still persisted in his diabolical pursuit! On their return to Hauer's house, Hauer expressed a regret that things had all gone wrong. No doubt he was disappointed in the most ardent wish of his heart; he panted for the destruction of his bro-

thers. By day and by night, for years, it had occupied all his thoughts. It is strange, gentlemen, that after all these things, the eyes of this young man were not opened. He still continued the dupe of the artifice of his brother-in-law. He promised not to tell : And the better to prevent a discovery ; and that it should not be known that the skin was taken from his neck by the rope, he accompanied Solomon Hauer, by the direction of John Hauer, to their father's plantation near Bethlehem. Had Hauer succeeded in this last wicked act, it is more than probable he never would have been brought to an account for it. It was artfully conceived ; and it would have appeared so like an act of suicide, that a different suspicion would scarcely have been awakened. As the fact really turned out, and perhaps with a view to renew the attempt, we find him propagating stories that Peter Shitz was deranged, and that he expected he would endeavor to take away his own life ; that in case he should fall the victim to his avarice, it might be supposed to be a consequence of melancholy or insanity. He however told different stories about it to different people. He related the same circumstance in ways totally inconsistent with each other. To Jacob Mehs he declared that Peter had really attempted to hang himself ; and that he just discovered him in time to cut the rope ; that he struck him until he brought the blood from him, which, if he did not believe it, he might still see upon the floor at Wolfersberger's barn. To Wolfersberger himself he told only, that he thought Peter would hang himself ; that he was sometimes out of his head ; sometimes had a pistol in his pocket, and sometimes a rope. That, the second time, he followed Peter to the barn, and found him concealed in the clover hay ; that he struck him until he fell upon the floor ; and that if he did not believe it, he might go up, and he would see the blood upon the threshing floor. Wolfersberger did indeed go up, and he saw plenty of blood upon the barn floor. But he saw more ; he saw what Hauer did not expect or calculate upon ; he saw the broken rope lying near the blood !——

Gentlemen, it is truth only that is uniformly consistent. When people take pains to conceal the truth, the very means they pursue, for the purpose, most frequently leads to detection. They will tell so many different stories that they cannot balance together ; when they come to be weighed in the scale of probability, no room can remain to doubt of their falsity. Such is the wisdom of providence, that villainy is often exposed by the very ways which it seeks for concealment.

Every attempt which Hauer made by himself, or with the assistance of his brother Solomon, thus failed. Means more bold and desperate must be resorted to. That he employed a number of persons hardened enough to commit the fact, is beyond a doubt. Who they were, is your present inquiry. The heavy charge is brought against the prisoners Donagan and Cox. The confessions of Hauer you have heard read. The Judge has told you that they are evidence only against Hauer himself, and not against the others; that it should not affect them, and that you must seek for other evidence of their guilt. To all this we agree. The confession, however, proves a very material circumstance; that a conspiracy of the most dark and dreadful nature was formed to take away the lives of Francis and Peter Shitz; that the price of blood was agreed upon. Who were the actors in this bloody tragedy remains to be investigated. When a conspiracy is once formed, the act of one conspirator is the act of all; but then we must, it is true, first prove the connection between them. The artful management of those concerned in this case, has really rendered this difficult. To discover them we must have recourse to presumptions. Some of those presumptions are of a remarkable nature; and should they even not be deemed sufficiently strong to warrant a conviction, yet they must forever leave the mind unsatisfied of the innocence of the prisoners. We will show you, therefore, gentlemen, how the subsequent facts and circumstances, and matters which will be brought home to the prisoners, are connected with all that happened before, and are exactly of the same kind, and appear to have the same object as those which preceded, and which relate to Hauer alone, before he had any knowledge of Patrick Donagan. (See 6th Term Rep. 528.) We conceive it impossible that some of the circumstances could have occurred, or that some of the expressions of Donagan can be accounted for, unless he had had an intimate knowledge, from the lips of Hauer himself, of all that had already been done, and the designs he had in view. The connection of Donagan and Hauer, and the time when Donagan first became an inmate at Hauer's house, more than a year ago, though the force of the observation has been endeavored to be weakened, are very material in this case. It must have been then that the system began to be changed. And we think that it will appear that Donagan had an active hand in all that followed. Previous to this, Hauer had no knowledge of these Irishmen, McManus and others; one of whom, it is decided, is guilty of the fact; he knew nothing of their disposi-

tions and characters, and their fitness for the work of blood. Probably he never would have thought of them, if they had not been brought to his knowledge by their own countryman, Donagan.

But it is said, all this is presumptive evidence ; it is dangerous to rely on it ; and they have read to you some law cases upon the subject, and have applied them artfully to your passions. If not rightly understood, they may do much harm, and almost in every instance arrest the arm of justice. We will endeavor to do away the effect that the gentlemen have designed to bring about, in their observations upon them, and to show you the true state of the law upon the subject, before we proceed further ; and we trust we shall not break in upon the rules of law as they really are ; for they are founded in wisdom and propriety.

It is true, gentlemen, it is said in 2 Lord Hale, 289, that it is better five guilty persons should escape than one innocent person should die, and Mr. Blackstone adopts the sentiment, in his 4th vol. 358. All this may be well enough to induce a reasonable and necessary caution. But the principle is very often introduced, as it has been upon the present occasion, as an argument against any conviction at all upon presumptive evidence.

Certainly, however dangerous it may be to presume too much from a single, solitary circumstance : yet where a number of circumstances combine, where they all seem to unite, to correspond, and lead to the same conclusions, though any one of them separately might appear trivial and inconclusive, they will together form a mass of testimony, irresistible, and which can scarcely be mistaken. Why does the law permit you to hear such evidence, if, the moment you have heard it, you are to throw it aside as deserving of no consideration ? When a case is brought before you, which depends not upon positive proof, but upon a variety of circumstances, tending to prove a certain fact, as honest men, regarding the solemn oaths you have taken, you are bound to consider it, with the assistance of the Court, deliberately and maturely, to give it all the weight it deserves ; and if it carries with it conviction to your minds, it is your duty to act upon it, fearless of the consequences ; useless, otherwise, would be those reasoning faculties, and that capacity to judge, which God has given you. You are

not to reject such evidence, because it may be called presumptive evidence ; nor because a great and benevolent Judge, in the overflowings of his humanity, has declared, that it is better five guilty persons should escape, than one innocent man should die. If such expressions are thus perverted, and a weight given to them, which it was certainly never intended, (and it would be unreasonable) they should have, what, gentlemen, is to become of the justice of the country in criminal cases ? Instead of five or ten guilty persons escaping, scarcely one could be punished. The midnight murderer calls no witnesses to behold his guilt ! If not upon presumptive evidence, how are you to trace out half the villainies and crimes of murderers and felons ? They must all remain unpunished. A jury, under the continual dread of doing wrong, are never to do right. In more than half the crimes that are committed, no positive proof could possibly be procured. How are you to discover the dark assassin, unless by tracing the means by which, or the motives for which, he committed the deadly deed ? Former grudges, threatening expressions, other unsuccessful attempts, especially where great advantages are expected to result from the act ; the purchase of poison, or other instruments of death, without being able satisfactorily to account for them ; and a variety of circumstances, unusual and extraordinary in the conduct of men, and which can only be calculated for mischief, and not otherwise accounted for, must, as the case may be, be brought up, when the unhappy occasion shall require it, to be publicly investigated ; and upon their strength or weakness, must the objects at whom they are pointed, stand or fall. But, gentlemen, do the cases which have been read, lead to the absurd conclusions you are requested to draw from them ? By no means. The two instances put by Lord Hale, are cases, where the very killing was never proved. Where it was even presumed that a murder had been committed, and therefore he tells us, that he never would convict of murder, unless the fact of the murder were proved to be done, or, at least, the body found dead. That is not the case here ; there is no doubt here that a dreadful murder has been committed. That being the case, Lord Hale nowhere says that we shall not have recourse to presumptive evidence to discover who the murderer was. He does, indeed, say, it must be WARILY used. Be it so. To this we have no objection. Consider it well ; but do not suffer yourselves, by such arguments as you have heard, UNWARILY to reject it.

With respect to the cases in 8 Mod. they are not difficult to be answered. Whether they are truly reported or not, we cannot ascertain here; the book which contains them is certainly not a book of very great authority. Independently of that, the cases in themselves carry with them no intrinsic weight. They establish no rule of law; nor does any judge undertake to declare that presumptive evidence is not sufficient to induce a jury to convict in a criminal case. These cases do indeed inform you, that the evidence being only presumptive, the juries did not think proper to convict the defendants. What sort of juries they were; or how they were directed by the Court, no where appears. But in one of the cases the acquittal seems to us extremely strange; we mean the case of Sprigg and Oakley. We know not what kind of evidence that jury might require. The running the goods on the coast of Ireland; the repair of the boat; the rapid increase of the water; the owner remaining under deck all the time; the circumstance of the purchase of an useless auger; the refusal of the master to suffer the sailors to go down into the hold for the purpose of a search; and, above all, the false pretext that both the ship and cargo were lost, when the cargo had actually been landed in Ireland, pointing out the great object of the destruction of the ship, we conceive ought to have placed the matter beyond a doubt with reasonable men. That jury do not appear to have been such. There have, however, been juries who have acquitted against the plainest proof; there may be such again; and those cases might be brought to apply to the present, equally as well as the two cases in 8th Mod. We think no jury in this country could resist such evidence as was produced in that case. The best that can be said for these cases, is, that the facts of burning and sinking the ships did not conclusively follow from the circumstances proved; they might have happened from other innocent circumstances.—But then this absurdity follows, that a bare possibility of innocence, is, in such cases, to destroy the most rational ground of presumption of guilt. Upon the whole, we hope this jury are to be guided by their own judgments; and not by what a jury in any other case has done; when for aught we know, that jury might have been composed of the most ignorant or the most corrupt of men. As to the case in 8th Mod. 249, where Gilbert is made to say, “that a man shall not be found guilty and hanged upon presumption,” it falls within the case cited by Lord Hale; a man was indicted for stealing the goods of a person unknown, merely because he would not give an account how he came by them; and he was thought to be too poor

to come by such property honestly ; but no felony was proved ever to have been committed, nor were they able to show any other owner of the goods. To have convicted in that case would indeed have been to have built up presumption upon presumption.——Gentlemen of the jury, we will drop this point. The evidence is properly admissible ; you are to judge of its force ; we have endeavored to do away any improper effect which the reading of those cases by the gentlemen may have had ;—and we leave the law as it really stands.

If, gentlemen, you compare all the evidence together, you will find it so connected, that the latter circumstances could not have existed without the former. Can it be reasonably supposed that Donagan was ignorant of the designs of Hauer after what you have heard ? Who but Hauer could have informed him of the *wiederkomme* drops ? A stranger to this country, unacquainted with German terms and expressions, where could he have acquired the notion of any such thing, unless by reason of his intimacy and connection with Hauer ? For we do not find any other person than Hauer, who knew any thing about such a medicine, or that had ever heard of the name. And we well know they were drops so called by Hauer, and he had attempted to make use of them, long before we hear of any acquaintance between him and Donagan. We think it is very evident, too, that he knew the object to which they were to be applied. But to oppugn this, you are told that he was under a belief of ghosts, and that he wished, for certain purposes, by means of those drops, to raise up the spirits of the dead ; that he had heard of this magic power attributed to these extraordinary drops, and was anxious to procure them for the purpose of experiment. Strange suggestion ! They have told you that Donagan does not want understanding ; and yet they would have you believe him to be the veriest fool upon earth ! What man is there of any understanding, who can for a moment suppose that the grave can yield up its contents, or that departed spirits have power to hold conversation with man ! These are all the visionary chimeras of an heated brain ! the creation of a disturbed fancy ! For the minds of those who are under the rational influence of the religion we profess, must discard such ideas ; and must be persuaded that the grave has not the power to surrender up its dead, until the last trump shall rouse them from the long slumber of ages ! That he designed to procure wealth by means of these drops, we believe. But

it was by adding to the number of the dead, that he expected to accomplish this end. How else do you account for his anxiety, and his earnest desire to procure the drops, when he was in company with Hauer himself, if he had not known the use to be made of them? if he had not been acquainted with the whole secret? For you will observe, that when Hauer procured the drops from Dr. Luther, who then lived at Lebanon, and when he pretended to have got them from Bethlehem, he had no acquaintance with Donagan. How then did Donagan become possessed of a knowledge of all these facts and circumstances, unless from an intimate communication between him and Hauer respecting it? For he declares to Dr. Staufe, that he had got some from Bethlehem, and from Dr. Luther before, but they were **NOT STRONG ENOUGH**. Now from this expression of Donagan, can you doubt for a moment that he knew all about the potion that had been administered to Peter Shitz, and that it failed in its operation; it was not **STRONG ENOUGH** to produce the desired effect? His conduct at Orndorf's is also remarkable; his rising in the price so rapidly; his repeatedly calling for it. It did not suit him to go to Dr. Luther. His potions were not **STRONG ENOUGH**. Why wish to procure the drops by means of third hands? If they were harmless and innocent, why did he not at once go to Fahnslock and others himself, where he declared such medicine was to be procured? It would rather appear, that by his earnestness—by the sums offered, and by his demand of an unknown medicine, he wished to tempt and seduce the persons to whom he applied to anticipate him, and to give him a deadly poison. It is said we have not shown the drops were poisonous, nay more, we have not shown the drops themselves. We cannot tell what they were, We know of no one who can give us any information about them. But that Donagan was in search of a deadly poison, is beyond conjecture. Why else his suggestion, that he knew it was a medicine that the Doctors **DID NOT LIKE TO SELL**? Why so many dark hints about it? Why desire to procure it at any price—beyond the value of any medicine yet known? Why his repeated declarations that he meant no harm with them? Why did he declare to Dr. Koenigmacher, that he would bind himself in 1000 or 10,000 dollars that he would not hurt a living creature with them? Why all this, we answer, if it was an harmless liquid, and not a deadly poison, which he was in search of? If it was not to contain in it the power to harm, these expressions could mean nothing. That he meant to try projects as Dr. Staufe called them, is morally certain; but they were projects of the most malignant kind!—

Gentlemen, the circumstance of the powder has been treated with much levity by the counsel for the prisoners. That it might have been purchased innocently is true. That this may not be the same powder, is also possible. It would have been more satisfactory if Donagan had attempted to give any evidence of the purposes to which he had applied the powder, which, it is beyond a doubt, he purchased of Mr. Kapp. One would suppose this would have been within his power. If he had been making any innocent use of gunpowder after that purchase, either by blowing rocks or otherwise, he might easily have shown it. His not doing so gives considerable weight to the circumstance; and though in itself it is inconclusive; and even the resemblance of the grain, and the paper, with the samples produced, and the form and appearance of the bag are not infallible proofs; yet taking it with the other circumstances, it gathers strength. The smallness of the quantity found, (there being but half a quarter of a pound purchased of Kapp,) being insufficient for almost any other purpose; and in the same kind of bag; purchased by a person who was the inmate of Hauer, comparing it with all that went before, with their joint researches for the *wiederkomme drops*, and with the fatal event that followed, the death of Francis Shitz by means of the powder out of such a bag, and Donagan not attempting to account for any other use made by him of the powder he purchased; renders it extremely probable it is the identical powder purchased by Donagan, to be used for the horrid purpose actually effected by it; and that he knew it, and that of course it ought to be considered as very material, and forming a weighty part of the great mass of evidence in this case—But the jury will give it such weight as they think proper. We have done our duty in bringing it before them.

Gentlemen, all these men are lately from Ireland; and it is surely worthy of remark, that, Hauer had no knowledge of any of them until after his intimacy with Donagan. How else was M^cManus, who was to become a principal actor in the bloody scene, introduced to the acquaintance of Hauer, if not through the means of Donagan? Donagan, from his knowledge of these men, must have procured them to commit the murder. He must have been the agent, the contriver; he must have assisted intimately in the general plan. Is it reasonable to suppose that Hauer, without any knowledge of M^cManus, who had lately come into the country, would have acted so

wildly as to have communicated so important a secret to him, unless he had been directed to him by Donagan, who was intimate with him, who must have known him and his bloody disposition well? Is it probable, if we must reason so much upon probabilities, that these men could have been searched out or procured in any other way, than by the interference of Donagan? We find Donagan and M'Manus frequently together. Gentlemen, it is no trifling circumstance, their being together at Logan's, where M'Manus had the two odd pistols, highly charged. That those very pistols were at Shitz's house on the night of the murder, is to be presumed from the singular circumstance, of the uneven ram-rods found in the house; one was longer than the other; so was one of these pistols longer than the other; the old one was a little longer than that which appeared to be more new.—The time when these pistols were seen by Miller in the possession of M'Manus, corresponds very well too, with the time mentioned by Kapp, when the powder was purchased of him by Donagan. The coincidence of circumstances is surely remarkable. —

As a proof of the innocence of Donagan, it is contended that he was ten miles from the scene of action, on the night of the murder, in a respectable house. It is true this is so proved, by a character highly respectable. But what is that to the purpose? It matters not where he was after he had set the whole machine in operation; it cannot possibly tend to prove his innocence. If we had indicted him as principal, then this circumstance might be material to be inquired into; but we have charged him only as an accessory before the fact, and not at all as being present: so that his being ten miles off concludes nothing. This circumstance, however, requires a little more examination.—We cannot conceive that his being at the house of George Illig is any proof of his innocence. It rather appears to correspond with a general plan, artfully contrived beforehand, with a view to avoid detection. It is somewhat singular that he left his home at this very time. Who can hesitate to believe that he purposely went away, in order that Hauer might bring some stranger into the house who might be a witness for him; and accordingly Baker is brought there to sleep in the room with Hauer and his wife; which he had never done before. When he came there he naturally asked for Donagan, and was told he had gone away that morning to Illig's. He then asked for M'Manus's wife. Charles had taken her away—so that it seems to have

been agreed, that the whole knot should separate, and each one of them have a voucher as to his being in a certain place on that night, in case such evidence should be required at a future day.—From the declaration of Hauer to Baker, it would seem as if Donagan had left his house in the morning ; it was not until night that he went to Illig's. What he was about all that day he has not attempted to explain ; it is left to be conjectured ; most probably he was assisting to arrange the horrid business which was to be transacted in the night. He has thought that it would be sufficient if he could make it appear that he was in a decent house at the time of the murder. Accordingly he was to be at Mr. Illig's. Baker was to be at Hauer's. M'Manus was to procure some one to be a witness for him. He endeavored to procure Caffry, and actually took Cox with him to the house of Geiger.*—Thus the whole business seems to have been preconcerted ; and this at once accounts for Donagan going to Illig's on that very night. It was the purpose of procuring a good witness in Mr. Illig. What was his conduct when the officers came to arrest him ? He did not appear to be concerned. There was no change in his countenance. The charge against him of so dreadful a nature, seemed to strike him with no terror, or apprehension. He must have expected this, and have been prepared to act that part ; accordingly he turned round to Mr. Illig, and with the greatest coolness and indifference, asked him for a few lines that he was there all night. This must have been his object from the first. If he had been innocent, he most probably never would have thought of demanding such a thing. Nor would a man of the purest heart, who should be thus suddenly charged with having committed a murder, bear up with the same presence of mind : However innocent, it is almost impossible to meet a circumstance of that kind with the same firmness and unconcern which Donagan evinced. His mind, therefore, was prepared for the event ; he had settled the part he was to act upon the occasion.

One of the strangest suggestions has been made which we have ever heard : That Hauer was the projector of the necromancy, which was probably designed to hang Donagan, instead of hurting Shitz, and to sweep Donagan's

* It would seem from Hauer's confession, that the same plan was to be pursued by M'Donough who was to have witnesses in the house ; but was to get out privately behind the bed, through a hole in the wall.

money into his own pocket ; and that Hauer's character and conduct seem to lead to this conclusion. Now, how is all this to follow ? or how would the destruction of Donagan have put his money into Hauer's pocket ? We have been told Donagan was poor, but honest. What object would his one or two hundred pounds have been to Hauer, if he could even have procured it by Donagan's death, in comparison to the estate of the Shitz's whom they say it was not intended to hurt ? But Hauer would not have got the money in case of his hanging Donagan ; he was not his heir ; nor was any of his money in Hauer's hands ; but all lodged, for safe keeping, with Mr. Illig. How absurd, then, is such an observation. It is like the very many conjectures which the gentlemen have made upon this occasion, which have no premises to support them.

It is said that it could not have been designed to poison by these drops ; that if that had been the intention, six pence worth of arsenic might have been got, which would have been sufficient for the purpose. But, gentlemen, this would not have answered.—The poisoning by arsenic is the most easily discovered of any poison that can be procured. It seldom fails of detection. It must be mixed with some food, where it can be seen, or with some drink, where it would leave the settlings behind. The poisoning by arsenic has most commonly furnished the means of discovery. Besides, it is a well known poison to most people. Large quantities are daily purchased for the destruction of rats. In this case it would not have answered the purpose. Peter Shitz, especially, was to be seduced with a belief that certain drops, used in a particular way, would put him in possession of great wealth. The potion was to be administered under this disguise. Arsenic would not have answered the purpose ; he would have known what it was. His death would have been accomplished long before, but the drops happened not to be strong enough, as Donagan himself declared. He would not, therefore, go back to Luther for them ; but he endeavored to search out for stronger drops, for the real stuff, as he called it. That he was in search of poison, we trust we have fairly shown from his own expressions, especially, that he would do no harm with them ; and would give security not to hurt a living creature ; which would have been absurd if the stuff he was in search of was innocent and harmless.

It is said, Donagan did not fly, when he was discharged by the justice ; nor when he was again arrested and discharged the second time ; and this is a strong proof of his innocence.

No, gentlemen, he did not fly ; and for the very reason which the counsel have given. That indeed, would have been A MARK OF HIS GUILT. He knew better. He was rejoicing in the success of his scheme ; and having escaped, would more naturally suppose that his innocence had been made manifest, or rather that his guilt could not be made to appear. He must have conceived that he had managed matters with so much art and address, as that his share in the bloody transaction could never be proved upon him. And, therefore, he was cunning enough not to attempt to fly, as it might have blasted all his schemes ; and have furnished a strong addition to the mass of circumstances, in case he should happen afterwards to be apprehended. This, therefore, proves nothing for him.

We think, therefore, taking all the evidence, and comparing one circumstance with another, it strongly implicates Patrick Donagan in the guilt of this murder. It is impossible he could have been a stranger to this horrid conspiracy to take away the lives of two innocent men, from the worst of motives. His whole conduct can not be accounted for in any other way, than by showing him to be a party concerned ; and it must have been him and him only, who could have brought Hauer to the knowledge of the persons and characters of M^cManus and the other Irishmen who assisted in the execution of the plot. Hauer's conduct, considering this in any other point of view, was that of a madman ; and without having the minds of these people prepared by one who knew them well, it would have been strange indeed for him, without any previous knowledge of them, to commit himself to them, unless he did it by the aid of some other person who must have been greatly in his confidence. Every probability points out Patrick Donagan as the instrument, and adviser of Hauer, in procuring these bloody hands for the purpose of wreaking his vengeance on his two brothers-in-law. — With these observations we commit him to your hands.

Francis Cox, gentlemen, is the next object of your consideration ; and we humbly apprehend, that the circumstances against him are irresistibly strong. Not only persons procuring, but those who even consent beforehand, are accessaries before the fact. For under the word AID are comprehended all persons counselling, abetting, plotting, assenting, consenting and encouraging to do the act, and not present when the act was done. Foss. 126.—If he went to the house of Geiger, with a knowledge of what was to happen, which is the circumstance to be inquired into, and with a view, if any future occasion should require it, to add perjury to murder, by becoming a witness for M^cManus, and endeavouring to conceal the truth of the fact, (which does not call for the strongest faith to believe) then is he completely within the spirit of the law. It is said, however, with an air of triumph, (and almost every witness was asked the question) that Francis Cox was never seen in the neighbourhood of the Shitzes, and that he was a stranger to John Hauer. But of what consequence is the circumstance ? It is not necessary to prove that he ever was there, or that he ever beheld John Hauer before the fatal murder. The only point in issue is, whether HE AIDED IN THE MURDER OR NOT ; this may be done in a variety of ways ; and altho' he never combined with Hauer or Donagan or M^cDonough, yet if he assisted M^cManus, if he combined with, and was accessary to him, it is all we are bound to prove—for a man may be accessary to one and not to the other. He may even be a procurer of a murder, and yet never have seen the actual perpetrator of the deed. If Hauer procured M^cManus to commit the murder, and M^cManus called in the aid of Cox, surely it can be no defence for Cox that he never saw Hauer ! Why the gentlemen have taken hold of so very trifling a circumstance we are at a loss to know, unless it be, that they are staggered by the strength of the evidence, and know not what to say.—Foss. 125—6.

It is contended that the evidence does not furnish any degree of probability that Cox was concerned, but loses itself in doubt, conjecture and uncertainty. Let us examine the force of this suggestion. We find Cox, on the night of the murder, sleeping at the house of Geiger, in consequence of a pre-concerted plan for that purpose ; because all this had been arranged before at Manheim. Is it not then a very constrained presumption, to suppose that he did not know what he went there for—that he never asked any question about

it? You are not only to conjecture this, but you must go further, and you are to take it for granted that he is a fool and an idiot; that he was the dupe of a young fellow like M'Manus, and a number of other conjectures, which are raised up, like magic, to do away the effect of the conclusion, which will naturally be drawn from the whole conduct of Cox. He and Caffry are to be carried to a certain house, to remain all night, for a considerable reward, and yet are not to know what they are to do there. We find Caffry very naturally asking for what purpose he was to go there; but he is not to be told without taking an oath to keep it a secret. It then naturally suggested itself to him that something improper was designed; and he refused to go; though the idea was held out to him that for the mere act of going to the house, and to remain there, while M'Manus was to go out, he was to receive so much money as would keep him from the necessity of working hard. But Cox is not to possess the same presence of mind. He is to be led, like a fool, into the difficulty without knowing what he is about; he is said to be the dupe of M'Manus. In the next moment he is to have wit and reflection enough to suppose that M'Manus meant to run away with some rich heiress—and yet is to give him no aid in this scheme, but to lie quietly in the house. What a variety of suppositions the gentlemen can now furnish for Cox to justify his conduct; and you are to wander, gentlemen, into what his counsel have called a wide field of conjecture, to try if possibly Cox might not have been gulled into all this; and you are to dream very hard that he is so great a dunce as to be imposed upon by the most frivolous pretences. Unfortunately, however, all these suppositions end in absurdity. Again, M'Manus had borrowed a saddle from Geiger; and you are told that he might have held out this as an inducement to Cox, in order to disguise his real object; and that the returning of the saddle appeared a plausible reason for his going to Geiger's. Well, then, two men are to be hired, at a great expence, to go a considerable distance, to sleep at Geiger's, because M'Manus had borrowed a saddle and wanted to return it! And when Caffry would not go, although the strongest of temptations, money, was held out to him, supposing it to be something wrong, on account of the mystery which appeared about it; Cox's easy credulity suffers him to be seduced away, and to be led up to Geiger's, partly on foot, and then riding by turns, in the severity of winter, to witness M'Manus returning a saddle! This is of a piece with the other conjectures. The only rational way of accounting for

this conduct is, that Cox and Caffry were wanted as witnesses, that they might be able to swear, in case M^cManus should ever be charged with the murder, that they went to bed with him in the evening, and that they rose with him in the morning, at a place five miles distant from the fatal scene ; and as to the intermediate time, of course they would be asleep, and not undertake to say any thing about him. It was for the purpose of perjury, then, that these men were wanted. Nor is it unlikely that they were to assist M^cManus in getting out of the house without the knowledge of Geiger's family ; they would have slipped him out of the window, and let him in again on his return, as has been said by Mr. Clymer, Cox might have done, had he known any harm was intended ; this, we say, was most probably the system that was to be pursued ; and then Geiger and his wife would also have been imposed upon, and without knowing the secret transactions of the night, they also would have been brought as witnesses that M^cManus slept in the house all night, and would have gone far to have acquitted him, from that very circumstance on his trial. But Providence ordered it otherwise. The three Jersey men came to the same house, on the same night : two of them slept in the same room with Cox and M^cManus ; it therefore became impracticable to let him out of the window ; it could not be done without a discovery, which would immediately have led to a suspicion that something wrong was going on. It therefore became necessary for M^cManus to make his way out as secretly as he could, which he endeavored to do, but the landlady had locked the door, and he was discovered. It was too late to draw from his purpose, and he was determined to go on at all risks. It was further contrived, that by rattling some stones on the roof of the house, he was to be let in by Cox. And when he did return, still in hopes to elude suspicion, he did throw stones on the house, although he must have seen the light through the window, and that the people were up. It is suggested that Cox had no motive for all this ; that there was nothing to induce him to assist in this tragedy. If we make out a strong case, and the circumstances speak loudly as to his guilt, which we believe they do ; it is immaterial whether he had any motive or not : or whether he aided the diabolical scheme merely for the sake of mischief. But we are scarcely left to conjecture that his iniquitous services were to be repaid by a large reward in money.—

The mysterious scene at Manheim has called forth many observations from Cox's counsel; and is said by them, as one would suppose they would say, that it furnishes no evidence of guilt. It is their duty, speaking for their client, to weaken the circumstances as much as they possibly can. They tell us, among many other things which they have suggested, that Cox did not hear and understand what passed between M^cManus and Caffry, and of course was not privy to M^cManus's design; and 2ndly, supposing he did hear, it is only doubt and conjecture, that he knew what M^cManus's views were, and not such proof as the law requires.

We have already answered this second ground. If guilt may be fairly and rationally inferred from the circumstances; and the conclusions are so strong, that a reasonable mind must naturally assent to them, as fair inferences from the premises, we cannot conceive that you ought to reject such proof, because there is a possibility you may be deceived. Human reason is in its nature fallible; and in this case, although every other way of accounting for Cox's conduct is ridiculous and absurd, yet you are told you must seek out, by every means in your power, whether there is no other possible way of accounting for it; and however foolish that way may be, you are yet to seize upon it to acquit the prisoner. You are to use every effort that a man, whom you can scarcely doubt to be guilty, shall escape, left by the remotest possibility on earth he might be innocent. In short, gentlemen, all presumptive proof is liable to the same objection. The ingenious man may invent a variety of ways by which certain facts might possibly have happened independently of those circumstances from which they most naturally and most probably follow. Then you must sacrifice your natural reason, you must disregard all consistency and probability, and surrender up your best judgment to the most fallacious and absurd arguments that can be made use of. In so doing, you would give a most fatal stab to presumptive evidence. You would scarcely have it in your power to punish any murderer. Because there is scarcely a case in which positive evidence can be procured; they must most frequently be convicted upon presumptions, or escape altogether.—Now to suppose that Cox's intentions were innocent, and that it is mere doubt and conjecture that he knew what M^cManus's views were, is to conjecture too strongly on the other side; you must not only do this; a single conjecture will not do; you must set him down for an idiot.—

It is to be observed that M'Manus had no knowledge of Caffry. The young man left Derry, May was two years, in the same ship with Cox. He was therefore well known to Cox. He had been his ship mate. It was Cox therefore who pointed out Caffry to M'Manus; he supposed that as he was quite a lad, working journeyman's work at a shoemaker's shop, without any property to depend upon, that he might be readily induced to come into every measure they might wish. But they were disappointed. When M'Manus wished for another witness, whose conscience, for the sake of gain, would bend to circumstances, Cox naturally turned his eyes towards Caffry. We find Cox, this fool and dupe of M'Manus, taking an active part in the business; he is really the agent, contriving to bring Caffry into the scrape, and managing a meeting between him and M'Manus for that very purpose. For, gentlemen, it was Cox himself who suggested to Caffry that he wanted to speak something to him, and appointed the meeting in the evening. When Caffry went up, Cox was busy about some law business before the justice; and he asked him what it was he wanted; Cox told him to wait till the business was done, and he would tell him. Well, then, as soon as the business was finished, and they left the house of the justice, Cox artfully contrived to leave M'Manus and Caffry together, and he himself walked before with Bretz, without regarding Caffry at all. It was at this period that M'Manus made the propositions to Caffry.—They went on to Cox's house, yet all that night Cox said not one word to Caffry, although he contrived the meeting, for the purpose, he said, of speaking to him about something or other. Surely then it is no mystery what that something was. It could be for nothing else than to introduce him to M'Manus, and to give M'Manus an opportunity to accomplish what he had in view.——But you are told so innocent and free from design was Cox, that he was taken up with his law suit, and had forgot every thing about it, and it could not be any thing that would interest his mind. To us it appears conclusive, that this was what Cox designed; that he had no other views; that he did not wish to speak to him on his own account; but merely to give M'Manus an opportunity to bribe him into a participation of the crimes which were to follow. You are further told that Cox could not have overheard what passed between Caffry and M'Manus. Well, be it so—what will be the effect of this?—Simply this; that Cox knew all that was going on; that the plan had been contrived between him and M'Manus before, to

seduce this young man. How else do you account for his conversation with Caffry a day or two after—when he asked him if he would do what they had been talking of before? How did he know what M'Manus wanted him to do, or what their conversation was? By inspiration! Or rather (more natural is the suggestion) by communication between him and M'Manus about it, or by the pre-conceived system which they were endeavoring to carry into execution. Every other way of accounting for it is irrational and absurd. To a reflecting and intelligent mind these strange circumstances, taken all together, must furnish the strongest probable evidence, that Cox knew all that was about to take place; that he himself had embarked in the villainy; that he wished to draw in his ship-mate Caffry; and that he himself was ready and willing to act the part assigned to him; and to take his station at Geiger's, for purposes which need not be repeated.—We must therefore, now, trace him to the house of Geiger. You have heard the observations made by his counsel, in his behalf, upon the circumstances which happened there. Every thing is laid to arise from the purest motives, and from the most conscious integrity.—This man who was a dupe and a fool before, now, from the firmness of his conduct, which could only be upheld by the rectitude of intention, gives the lie to every suggestion of guilt. He is not alarmed at any thing that took place, but remains unmoved at the confusion that the absence of M'Manus created in the family—let us see, gentlemen, whether his conduct does, as is contended, indicate a heart free from guilt.

When Geiger and his wife became apprehensive on account of M'Manus, and were afraid that his life would fall a sacrifice to the severity of the weather, as he had gone out, in a very cold night, but thinly clothed, Cox appeared altogether undisturbed at the circumstance. For a long time he refused to assist in searching for him. At one time he pretended he had gone after the girls. If he had had this suspicion; or if M'Manus had even held out this idea to him, why, having once mentioned it, did he not persist in it, as a reason why he did not choose to trouble himself about it. Why, if he believed any thing like this, did he at all carry on the farce of pretending to hunt for him? It would indeed have been a foolish circumstance to have travelled so far from his home, to sleep in a house, while M'Manus was to creep out upon some amour.—He could not have believed any thing like

this ; and his wish to impose upon Geiger by hinting such a matter, leaves the mind strongly impressed with the idea that he wished to conceal the truth. But there is more in his conduct upon this occasion. When he found that this circumstance had no effect upon the family, but that their uneasiness continued ; he told Geiger, that he complained of a belly-ache, and he had lent him his handkerchief to go out.—Then it becomes more unaccountable, if he believed this, that when M'Manus went out, half naked, in extremely cold weather, complaining of sickness, that he should have no apprehensions on his account—express no uneasiness or alarm, at the length of his stay. If he had supposed that was the only object which M'Manus had, it would have been more natural to have been anxious and uneasy about him, lest some unlucky accident had happened to him. As a man, he could not have been so reluctant to assist in the search for him. The real truth must have been, that he well knew the errand M'Manus had gone after ; and he knew that all search would be in vain.—You have heard, when he did go out, that he searched about but little ; that it appeared in him more like pretence ; that he stood aloof, and soon retired, before the rest, to his bed. When he came from the chamber, he at once put on the slippers which M'Manus had carried up, without looking for his own shoes, or expressing any surprize at their disappearance. If he had supposed M'Manus to be sick, it was base and inhuman, with all the unconcern in the world, to retire to his bed, and leave his companion, for aught he knew, to perish in the cold.—No, gentlemen, his whole conduct shows that he knew he was telling a falsehood. Besides, if he had been going only out of the house, on account of a temporary sickness, why was it necessary to settle the plan with Cox, of throwing stones upon the house, that he might be let in unknown to the family.—All these inconsistencies in the conduct and stories of Cox, most certainly do speak a language very strong indeed.—When M'Manus returned, about 3. o'clock in the morning, Cox was the only person who heard him throwing the stones upon the roof of the house. He accordingly came down as softly as he possibly could ; and when he found that the family were still up, he perhaps thought it more prudent to acquaint them that M'Manus was out there ; he opened the door, and said M'Manus was down there that they had been hunting for, that he had thrown some stones on the house, and wanted HIM to let him in : and he had come down to let him in.—It is remarkable, then, that Cox was vigilant, waiting for this very signal : that he immediately

rose, expecting he might have got M'Manus in privately, which was their great object. For unless this was the object, why was it necessary to rouse up Cox for the purpose, when the lamp was burning, and the people might be seen to be up, through the window.—Unfortunately for them, the family was up, and Cox could not have opened the outer door without a discovery; he accordingly acted the part we have just repeated to you. He then went to the door, and let M'Manus in; and said, damn your soul; Charley, where have you been, to make us hunt you all night. But Charley made no answer.

In the first place, Cox had not been hunting him all night, he was waiting for his signal, in his bed; and in the next place, it appears too much like affectation, and an anxiety on the part of Cox that the people should believe that he knew nothing about where M'Manus had been.—With these observations, without enlarging more upon it, we leave this part of the evidence to your deliberate consideration.—As to the scene in prison, we shall say but little. You have heard it as it happened. What it meant we can but conjecture. That these men have been concerned in some dreadful scene of blood, we can have no doubt. Whether it alluded to a murder different from the one now trying, or not, we cannot tell. It is pretended that it could have meant nothing; because Cox in the morning refused to tell it. This surely can prove nothing; because in his cooler moments his prudence might have returned, and he might naturally have supposed that a disclosure would be attended with too much danger to himself; and the greatest of criminals, remain until the last moment, under the hope of acquittal.—We have thought it our duty to lay the circumstances before you; treat it as you think it deserves.

We have thus briefly considered the evidence as it has appeared against the prisoners, and have made such observations as appeared to us the evidence deserved. We conceive that it is entitled to more weight than the counsel for the prisoners are willing to allow; and that it does not merit the many trifling epithets which have been so freely applied to it.

One of the counsel has said, that innocence is as bold as a lion ; and that the firm and undaunted countenance of the prisoners indicates that their minds are conscious of innocence, and that they are not under that dread, which is the consequence of guilt. Gentlemen, there is no trusting to appearances, they are extremely deceitful.—Yet let us observe, that the mere circumstance of being brought before this solemn tribunal, for trial of life and death, on a charge like the present, would naturally affect the mind, as well as the countenance of any man, who had not become callous, and hardened in iniquity. Look upon your prisoners ; it is true they appear to brave the storm that threatens them. Indifferent to all that passes, they seem indeed composed, regardless of what may happen. We do not agree with the gentlemen, that this is a proof of their integrity.—They appear to us to possess rather the hardened front of guilt than the serenity of innocence ; and their boldness must disgust more than it will attach in their favors.

But their characters are said to be good, that they have behaved well and acquired a good reputation from all who knew them. In answer to this we say, they have not been long enough in this country to acquire a character. Character cannot be judged of from the mere circumstance of the industry of a year or two, for the purpose of procuring a living. Expose it to temptation ; and if after the fiery trial it comes out unspotted, it then and not until then, becomes fair fame and honor. Much wickedness may lie concealed in the heart, waiting only for occasion to call it into action. Many a hypocrite will deceive the generality of mankind by external appearances, by an assumed sanctity of manners, while all their apparent good conduct is but a cloak to their maliciousness. There are many others who do not become wicked all at once ; but incapable to resist temptation, they slide from one evil to another, till at last they sully that fame which was bright before. These men have not had time to establish a character here. The testimony is all of the negative kind ; the witnesses have heard no harm of them before. There can be no reliance on such evidence. Their honesty remained to be put to the test.—A man who becomes a knave is not always discovered as soon as he becomes so. He may be reputable this year, but of evil fame the next. This has happened to many. If in this case the evidence is powerful and convincing, although only presumptive, their former

reputation will avail nothing.—The face of nature itself, which to day is all serene and lovely, to-morrow may be enveloped in clouds, and darkened with the storm.——

We have now, gentlemen, done our duty. We commit the prisoners into your hands. It is a most solemn charge. The duty must be a painful one to you; but you owe it to your country to perform it with a good conscience. If you do justice you have nothing to fear. And we are fully persuaded that you will judge them as your unbiassed consciences shall direct you, regardless of consequences; and that when you return to this bar, your verdicts will be the result of your best judgments, whether that may be that they are guilty or not guilty.——

[MEM. Notwithstanding what is said in pa. 86, that the summing up would be given as one speech on each side—yet the rule is adhered to only on the part of the Commonwealth—as it was thought advisable to give the speeches of Mr. Clymer and Mr. Hopkins separately.]

The President of the Court charged the jury in the following manner :

GENTLEMEN OF THE JURY.

The indictment upon which you are now trying the prisoners at the bar, charges Charles M'Manus and Peter M'Donough as principals; and the prisoners as accessaries before the fact. Charles M'Manus has been already convicted. But whether the present prisoners at the bar were partakers of the guilt, as accessaries before the fact, you are now called upon to determine.

The murder of Francis Shitz certainly roused the indignation of the county. Its atrocity is unequalled by any thing of the kind hitherto known in Pennsylvania. The execution of the murder was as horrid, as the motives were base and grovelling.

The keenest sensations must arise in the minds of all good men, and worthy citizens, that in a government of laws, predicated on the ground of freedom, where the security of our persons, and the protection of our property, are the primary objects of legislation, a massacre should take effect that would disgrace the manners and government of the most savage people!

It is proper, gentlemen, that this sensation in the public mind should be encreased and exhilarated; to cause us collectively, and individually, to become more circumspect in our observance of the conduct of each other, and more watchful of strangers.

But, gentlemen, in the relative situations we now hold; called upon by the laws of our country to decide upon the life and death of fellow men, we have a different part to act.——Sitting as arbiters of the fate of these men, we must divest ourselves of all prejudices we may have imbibed from stories told out of doors. We must disregard all apprehensions of ill-will from particular persons, or any dangers that may arise to us from popular rage.

Here occupying the situations of Judges and Jurors, it is a sacred duty that each of us should permit his understanding to be ruled and guided ONLY by the evidence which has been laid before us; and THAT EVIDENCE ONLY which is acknowledged and received by the laws of our country as genuine, should have an operation on your minds. Evidence which the law pronounces to have no weight, though it should, from the necessity of the occasion, come into the view of the jury, must, when they are informed that it is legally ineffective, be laid totally out of the question. Nothing, indeed, should induce a conviction in a case of murder, but evidence legal in itself, fairly and openly delivered in Court. Passion, prejudice, and the rumours of the country, should be done away. Cool inquiry; a deliberate examination and comparison of the circumstances one with the other, with a zeal for truth, ought to assume their places.

Here, I think it proper again to observe, that the confession of one prisoner, though it names others of the prisoners as being concerned with him in guilt, ought not to operate as evidence to convict those other prisoners. There is great reason in this rule of law. A man who has himself been guilty of an offence, ought not to be permitted to criminate another, in the absence of that other; and when the prisoner, who makes the confession, may have abandoned all hope of salvation here and hereafter; or perhaps because he may have given himself up to a rage against the person whom he charges;

The prisoners are arraigned before you as accessories before the fact to Charles McManus, who stands convicted of the murder of Francis Shitz.

The law defines an accessory before the fact, to be "One who being absent at the time the crime is committed, does yet procure it to be done ;— counsels with another to do it,—or commands it to be done."

It is necessary to constitute this offence, that the prisoner should have been absent at the time of the commission of the offence. For if he be present, aiding or abetting, he is then a principal.

A man may also be an accessory before the fact, though he does not communicate with the person who does the felony. As where A. prevails upon B. to procure C. to poison or kill D. If C. does kill D. A. though he never saw or spoke to C. upon the subject of the intended felony, is as much an accessory, and is as highly punishable as B. who procured C. to do the act.

As to the evidence before you, I shall recapitulate the prominent parts of it, as it respects each of the prisoners as they stand in order in the indictment. Having done this without comment, I must leave it to you to draw your own conclusions. It is not the duty of Judges, in cases like the present, to press arguments for conviction, which do not strike the mind so forcibly as at once to satisfy of guilt.

As to Hauer, gentlemen, when you consider the testimony relating to his malice against the deceased, and his brother before the murder : His behavior immediately before the death of Francis Shitz, and after, and all this accompanied by his own confession ; you can have no hesitation but that against him there must be a verdict of guilty.

As to Donagan and Cox the evidence is merely circumstantial and presumptive. When this kind of evidence, unaccompanied by any thing positive, is brought before a jury to induce a conviction for murder, it ought to be received and acted upon with great caution.

Though even probable presumptions, which may be drawn from a variety of circumstances attending a crime, will authorize a jury in any case, whether of the highest or lowest kind of offences, to convict; yet as circumstances, particularly when few in number, are sometimes uncertain and fallible, it is certainly prudent for the judicious and conscientious juror to scrutinize all the circumstances minutely. If upon such scrutiny he can fairly make the conclusion of guiltiness, he ought to do it firmly and without fear of consequences. On the contrary if hesitation and doubt remain, upon contrasting all the occurrences brought before him in evidence, the juror should as firmly and fearlessly pronounce the prisoner not guilty.—It is an excellent sentiment of a great lawyer and a most pious man, the famous judge Hale, That in cases of presumptive evidence, it is better that five guilty persons escape than that one innocent suffer.

The Judge then went into a particular detail of all the evidence that had been given, with the utmost impartiality and candor. He told the jury the Court would make no observations on the evidence, but leave them to judge of it for themselves; that they had heard the arguments and remarks upon the whole testimony, much at large, on both sides; and would decide for themselves what weight they were intitled to; and if they did not think the evidence sufficiently strong to convict, they ought to acquit without the fear of censure; but if they were satisfied in their consciences, that the prisoners were guilty, they ought as fearlessly to declare it.

Two bailiffs were then sworn to keep the jury together, in the common form, and the Court adjourned, when the jury retired, at four o'clock, on Sunday afternoon.

At half past seven o'clock in the evening, the jury had agreed upon their verdict. So great was the public curiosity, and so immense the croud of people, occupying the whole passage to the door of the Court-House, that when the Court went up to receive the verdict, it was with some difficulty they could get into the house.

The Court was opened,

CLERK of Oyer & Terminer.

Gentlemen of the jury, answer to your names—Cryer count.

CRYER. One, &c.

CLERK. Gentlemen, are you agreed on your verdict?

JURY. Yes.

CLERK. Who shall say for you?

JURY. The Foreman.

CLERK. John Hauer, hold up your hand—(which he did.)

How say you, gentlemen, is John Hauer guilty of the felony whereof he stands indicted, or not guilty?

FOREMAN. Guilty.

CLERK. Is Patrick Donagan guilty of the felony whereof he stands indicted, or not guilty?

FOREMAN. Not guilty.

CLERK. Is Francis Cox guilty of the felony whereof he stands indicted, or not guilty?

FOREMAN. Not guilty.

CLERK. Gentlemen of the jury, hearken to your verdicts, as the Court has recorded them. You say that John Hauer is guilty of the felony whereof he stands indicted, and that Patrick Donagan and Francis Cox are not guilty, and so you say all.—

JURY. Yes.

The Court adjourned until Monday morning at 10 o'clock.

On Tuesday, June 19th, Charles McManus and John Hauer were brought up to receive the judgment of the Court.

The number of people who attended to witness the solemn scene was very great ; and during the whole time a most profound silence prevailed.

The president of the Court addressed the prisoners separately to the following effect :

You have been indicted for the murder of Francis Shitz ; you have pleaded not guilty, and have put yourself for trial upon your country, which country have found you guilty. Have you any thing to say, why the Court should not pronounce judgment against you, according to law ?

CHARLES McMANUS (in a very respectful manner) said, NO, MY LORD. [The addition of MY LORD, was occasioned by his having lately come from Ireland, where the chief justice is addressed in that style ; and he may have thought it proper.]

JOHN HAUER would not speak at all ; but behaved, as he had done thro' the whole trial, in a disgusting and stupid manner.

HENRY, President.

The occasion requires I should say something to you, relative to your temporal concerns. If in doing this I can produce in your minds a just sense of the awfulness of your situation, the friendly act will exact from you a thankfulness, as for the only good which remains to you on this earth.

While you retain life, a devoutness of thought, and an intense contrition for your manifold iniquities, are indispensibly requisite to drag, as it were, by force, the forgiveness of your God upon you, and the quiet of your consciences. The principles of our religion, which, probably, before the commission of your crimes, had never been instilled into your hearts, are so benign and lenient as to furnish the strongest assurances to the most hardened

sinners;—even to those, who from the vilest of all motives, have imbrued their hands in the blood of a neighbour and a brother, that they, upon a thorough repentance of their transgression, shall be received into the arms of mercy.

'Tis to this holy religion you must turn your thoughts, and, in fervent adoration, supplicate our Saviour and Redeemer, that he may grant to you those joys, and that felicity in futurity, which contrite and repentant sinners always will receive !

A mere show of repentance will not do.—Tears, shed because of a reluctance, in the bloom of youth and health, to relinquish the enjoyments of this world, will be ineffectual. Nothing but a sincere offering of a broken heart, and an humble spirit, at the feet of the Deity can procure you a remission of the enormous sins of which you have been guilty.

To enable you to address the divinity in a decorous manner, and that you may the more easily be led into the true path, to the bosom of your God and Saviour, I must advise you to solicit some pious and worthy minister of the gospel, daily to attend you, with the aid of his exhortation and instruction.

A candid and pious acknowledgment of your various transgressions and impieties; and a reparation to society, so far as is now in your power to effect, by a full disclosure of the part each of you took in this bloody business, will most assuredly obtain for you portions in the mansions of bliss.—Without this effort be made by you, there can be no hope of salvation for you in the world to come.

Perhaps you may entertain a hope, that the mercy of the executive will interpose to screen you from death. But of this there is little probability.—The atrociousness and barbarity of your offences; the clearness and strength of the evidence against you; fortified as it is by your several confessions, are such, as, when represented to his Excellency the Governor, must inevitably render all such expectations fallacious.

Your attention here should be solely engaged in the preparation of your souls for another world;—where in a short time you must appear before the tribunal of that Judge, who is all merciful to the penitent, but inexorable to the abandoned sinner.

Lamenting your sad condition here, and with the most warm wishes for your eternal happiness, I must now proceed to pronounce that sentence which the laws ordain, and your crimes merit:

It is considered and ordered by this court, That you Charles M'Manus, be taken to the jail of the county of Dauphin, from whence you came, and from thence to the place of execution, and there be hanged by the neck until you be dead.

It is considered and ordered by this court, That you, John Hauer, be taken to the jail of the county of Dauphin, from whence you came, and from thence to the place of execution, and there be hanged by the neck until you be dead.

God have mercy on your souls! —

Elizabeth Hauer and Hugh M'Donough were brought up on Monday the 18th of June, and a Jury sworn. But the Commonwealth gave no evidence against them, and they were immediately acquitted.

Solomon Hauer was tried on the same afternoon, and upon the evidence of Peter Shitz, was convicted of an assault and battery upon the said Peter, with an intent to kill and murder him.

The Commonwealth having no evidence in their power against Peter M'Donough, he was, on motion, discharged without trial, under the HABEAS CORPUS act. It was not thought prudent to try and acquit him, from a full persuasion of his guilt, and with an expectation that sufficient evidence may hereafter appear to convict him.

Patrick Donagan and Francis Cox are still in confinement, under the orders of the Court, till they find security for their good behaviour. For although the Jury thought the evidence not sufficiently strong to justify a conviction; yet from all the circumstances, there is the greatest reason to believe that they were deeply concerned in the horrid crime.

On Saturday, July 14, 1798, at 12 o'clock at noon, CHARLES M'MANUS and JOHN HAUER were executed on the public ground in Harrisburgh, in pursuance of their sentence. The deportment of Hauer was much more decent and composed than was expected from his conduct since his trial and condemnation; during which time he was never known to utter a syllable, although every exertion was used which humanity could dictate or art devise. He persisted in remaining in the most indelicate and filthy situation, not admitting the least kind of covering to his nakedness; and attempting at every opportunity to bite those who came within his reach: one person was very much wounded by him in this manner. It was generally thought his singular behavior was feigned, as he had once before, it is said, escaped condign punishment by a similar conduct. But whether his dumbness was real or affected, he was at least consistent, and sustained the concluding scene without opening his lips—though without any symptom of insanity. From whatever cause it proceeded, there is ground to believe that latterly he was really incapable of speaking. Extreme terror has been known to produce this effect.

M'Manus, in his last moment, confirmed the testimony he had given to the grand jury, viz. That he was not in the house, or present at the murder; but that he held a horse at the end of a lane, in order to aid the escape of the perpetrators, who were, he said, Hauer and Peter M'Donough. He appeared with the same manly and even cheerful resignation, which he had invariably preserved during his trial and imprisonment; and which, added to his youth, had, notwithstanding the atrocity of his crime, procured him no inconsiderable degree of the public sympathy and favor. And although in every view, a just object of the punishment he suffered, yet the certainty that some of the partakers, perhaps promoters of his guilt, had eluded the hand of justice, could not fail to excite an unavailing regret at the inefficacy of human tribunals—too often baffled, by the skill of old and hardened offenders, in guarding against the means of detection.

The following is the last SPEECH and DYING CONFESSION of CHARLES M'MANUS, who was Executed at Harrisburgh, (Penn.) July 14, 1798, for the Murder of FRANCIS SHITZ, as taken down from his own Mouth, a short time before his Death, by the Publisher, in the presence of the Rev. HENRY MOELLER.

As it has been usual with poor unhappy Mortals who are brought to the dreadful situation with myself, to leave behind them some account of their sinful lives—I have thought it my duty, in like manner, to make this confession, in hopes it may prove a solemn warning to all Sinners and especially to those, who may be spectators to my ignominious Death.

I was born at Enniskellen, in the county of Fermanagh, and kingdom of Ireland, of honest, industrious and respectable Parents: My father was of the Roman Catholic Religion, but my mother was of the Church of England—to my mother's persuasion I have been most accustomed, which naturally produced an early partiality on her part towards me—and many a time has she given me the best of advice, and often, with tears of affection, pleaded with me to guard against my youthful follies. But alas! how soon did I forget her maternal instructions—for I had scarcely attained my fourteenth year, before I began to form schemes for the purpose of seducing honest women, in which abominable wickedness, I have been but too often successful, both with married and single; and have had three children laid to my charge in consequence of this illicit behaviour.

At the age of fifteen years, I was lawfully married to Polly Brown, of a respectable family in my native country—She is now here, to witness the awful end of her unworthy husband. By her I have had one son, who to the best of my knowledge, is now living, about five years old.

In July, 1796, I came over to America, and a few days after I landed, came to this county, and worked with several people, viz. Henry Grubb, George Illick, Jacob Whiteman, Michael Hoch, and George Calbach, to all of whom I strived my utmost to give satisfaction by a faithful and diligent attention to my employment.

Although I confess myself to be heinously wicked in the sight of God—and deserving the melancholy death that will shortly be inflicted, agreeably to the laws of this country; yet, I solemnly declare, in the presence of that God, before whose awful tribunal I expect in a few hours to appear, to give an account of all the deeds done in this life, That the Deposition which I gave to the Grand Jury in March last, was the whole truth. But I acknowledge that the woman I spoke of in my testimony before Squire Carpenter, was not my wife, but one of those females I had wickedly led astray:—Neither was it true, that I purchased the Pistols, as I have represented. It was Peter M'Donough who procured them, as well as the large Knife and a Bullet Mould, in Lancaster.

I cannot tell whether it was John Hauer or Peter M'Donough who perpetrated the fatal murder; but after they had returned to me, where I was holding the Horse, at the end of the Lane, Hauer informed me that one of the Shitzes had made his escape; however, said he, if he does not die with what he has got, and I am not put to Gaol for this, I will shoot him, and if I am, my wife will poison him, which she would have done long ago to both, had she not thought it a pity for the Girl and two little Boys in the same house.

Before I leave this world, I conceive it a duty I owe to Humanity and to my God, to make known, that Peter M'Donough, Hugh M'Donough, Francis Cox, and Patrick Donagan, were to my knowledge, aiding in the

Hellish plot (for which I am to suffer) equally with myself: And that John Hauer, my fellow-sufferer, has declared to me, that his wife Elizabeth Hauer, was also privy and assisted in forming the horrid deed against her brothers, as also his brother Solomon Hauer: And that it was settled between him and Peter M'Donough, to destroy me afterwards. The latter part of this information Hauer made known to me, while we were confined in one apartment together, and during the time he has behaved so uncommon to all who visited him, in order to appear insane: But in private, has often informed me how he would behave, in order to frighten the people into a belief of his lunacy;—and repeatedly declared since we have been confined, that if he escaped this time he would assuredly destroy the surviving brother, Peter Shitz.

It is also my duty to disclose, for the security of my fellow creatures, a horrid Murder, perpetrated by Peter M'Donough, on his Uncle in his native country, about 8 years past: The old gentleman was a Bachelor of considerable Estate, and betrothed to a young woman in his neighbourhood: Peter fearing this would be the means of excluding him from the inheritance, took the wicked resolution to murder him, which he fatally effected, by stabbing him in a most barbarous manner, and afterwards threw the bleeding corpse upon the fire, which burned away a great part of his head. He was cleared on his trial, by reason of perjury (known to be so after his escape) of the principal Witness, named Molly Farley, to whom he has ever since been attached—and she was to have been a principal Witness against him at the late Court—but has disappeared, and by that means he has escaped the second time, that awful justice which awaits him.

I return my sincere thanks to the worthy Ministers of the Gospel, who have attended me in my solitary prison for the good of my soul; and trust I feel greatly relieved from the heavy burden of sin which has preyed upon my soul from their blessed counsel—may God reward them for their kind services. I have received unmerited tenderness and humanity from all the Gentlemen of Harrisburgh, whose pity has excited them to visit me. I pray them to accept my last thanks.

I can truly affirm I have never stolen any thing in my life, nor did I ever cheat any person, to my knowledge, of the value of a shilling. But I confess myself guilty of knowing and assisting in the dreadful and cruel Murder which I must in a few—alas! very few hours expiate with my own life! And I pray, my fellow-creatures, who may witness my shameful Death, to beware of the temptations that young and susceptible minds are always in danger of. In following too much the dictates of my own desires, I forgot my religion—alas! I forgot my God!—And now close my eyes on all earthly things, and die in the prime of life, aged a little more than Twenty Years!—in full hopes that my Heavenly Father, will accept my penitent Soul, through the merits of his Son Jesus Christ, who died to save Sinners.

(Signed)

CHARLES M'MANUS.

In the Goal at Harrisburgh, July 12, 1798.

